

November 7, 2019

Advisory Council

Meeting Materials Packet

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**ADVISORY COUNCIL MEETING
NOTICE & AGENDA
November 7, 2019 | Thursday | 9:00 am
Until the Completion of Business**

Meeting Location:

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

Teleconference Participation Option:

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

Webcast Option:

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

Advisory Council Members:

Pascal Benyamini, Industry	Sharron Bradley, Industry
Burt Grimes, Industry	Chris Higdon, Industry
Judy Levin, Public	Michael Lipsett, Public
Donald Lucas, Public	Steven McDaniel, Industry
Antoinette Stein, Public	Steve Weitekamp, Industry
Brandon Wilson, Industry	David Yarbrough, Industry

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

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

AGENDA

1. Welcome and Introductions
 - a. Facility Safety and Courtesy Items
 - b. Roll Call of the Council/Audience/Teleconference Participants Noticed
 - c. Review and Discuss Future Meeting Dates
 - d. July Council Meeting Recap
2. Operations Update
 - a. Budget
 - b. Personnel
3. Statistical Overview
 - a. Licensing
 - b. Consumer Complaints
 - c. Enforcement
 - d. Field Investigations
 - e. Laboratory Testing
4. Legislative Update
 - a. AB 5 (Gonzalez) – Worker Status: Employees and Independent Contractors
 - b. AB 496 (Low) – Business and Professions
 - c. AB 1296 (Gonzalez) – Joint Enforcement Strike Force on the Underground Economy: Labor Enforcement Task Force
 - d. SB 358 (Committee on Transportation) – Transportation
 - e. SB 391 (Monning) – Household Movers Act: Enforcement: Special Investigators and Supervising Special Investigators
 - f. S. 3551 (Wicker) – Safer Occupancy Furniture Flammability Act (SOFFA)
5. Regulations Update
 - a. Substantial Relationship Criteria and Rehabilitation Criteria – Amendments to Title 4, California Code of Regulations (CCR) §§1380 and 1381; Title 16, CCR §§2767 and 2768; and new CCR sections, Title 16
 - b. Household Mover Regulations – Initial Rulemaking Proposal
 - c. Law Label Regulations – Initial Rulemaking Proposal and Rules and Regulation Booklet
6. New Law Implementation
 - a. SB 1483 – Bureau Name Change and Definition of Consumer Goods
 - b. AB 2998 – FAQ Update
7. Electronic Appliance and Repair Update
 - a. Ignition Interlock Device Outreach
 - b. Service Contract Requirements

8. Home Furnishings and Thermal Insulation Update
 - a. Law and Flammability Label FAQ and Forms of Law Labels

9. Division of Household Movers Update
 - a. Household Mover Scope and Licensing Requirements
 - b. Tariff Update for 2020

10. Public Comment on Items Not on The Agenda

11. Future Agenda Items/Confirmation of Next Meeting Date

12. Adjournment

Agenda Item 2a: Budget Update

0325 - Electronic and Appliance Repair

Analysis of Fund Condition

Prepared 10.24.2019

(Dollars in Thousands)

2019-20 Workload & Revenue		Budget				
		PY 2017-18	PY 2018-19	Act CY 2019-20	BY 2020-21	BY+1 2021-22
BEGINNING BALANCE		\$ 2,848	\$ 3,810	\$ 4,104	\$ 4,267	\$ 4,388
Prior Year Adjustment		\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance		\$ 2,848	\$ 3,810	\$ 4,104	\$ 4,267	\$ 4,388
REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS						
Revenues:						
4121200	Delinquent fees	\$ 95	\$ 107	\$ 112	\$ 113	\$ 113
4127400	Renewal fees	\$ 2,458	\$ 2,582	\$ 2,702	\$ 2,739	\$ 2,739
4129200	Other regulatory fees	\$ 29	\$ 24	\$ 26	\$ 27	\$ 27
4129400	Other regulatory licenses and permits	\$ 606	\$ 258	\$ 273	\$ 275	\$ 275
4143500	Miscellaneous services to the public	\$ 1	\$ -	\$ -	\$ -	\$ -
4163000	Income from surplus money investments	\$ 29	\$ 60	\$ 63	\$ 65	\$ 65
4171400	Escheat of unclaimed checks and warrants	\$ 5	\$ 18	\$ 10	\$ 10	\$ 10
Total Revenues, Transfers, and Other Adjustments		\$ 3,223	\$ 3,049	\$ 3,186	\$ 3,229	\$ 3,229
Total Resources		\$ 6,071	\$ 6,859	\$ 7,290	\$ 7,496	\$ 7,617
EXPENDITURE AND EXPENDITURE ADJUSTMENTS						
Expenditures:						
1111	Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 2,096	\$ 2,599	\$ 2,829	\$ 2,914	\$ 3,001
8880	Financial Information System for California (State Operations)	\$ 4	\$ -	\$ -1	\$ -1	\$ -1
9892	Supplemental Pension Payments (State Operations)	\$ -	\$ 21	\$ 46	\$ 46	\$ 46
9900	Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 161	\$ 135	\$ 149	\$ 149	\$ 149
Total Expenditures and Expenditure Adjustments		\$ 2,261	\$ 2,755	\$ 3,023	\$ 3,108	\$ 3,195
FUND BALANCE						
Reserve for economic uncertainties		\$ 3,810	\$ 4,104	\$ 4,267	\$ 4,388	\$ 4,422
Months in Reserve		16.6	16.3	16.5	16.5	16.2

0752 - Home Furnishings and Thermal Insulation Analysis of Fund Condition

Prepared 10.24.2019

(Dollars in Thousands)

	2019-20 Workload & Revenue		Budget Act		
	PY 2017-18	PY 2018-19	CY 2019-20	BY 2020-21	BY+1 2021-22
BEGINNING BALANCE	\$ 3,054	\$ 3,748	\$ 4,305	\$ 3,724	\$ 3,019
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 3,054	\$ 3,748	\$ 4,305	\$ 3,724	\$ 3,019
REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS					
Revenues:					
4121200 Delinquent fees	\$ 104	\$ 124	\$ 106	\$ 111	\$ 111
4127400 Renewal fees	\$ 4,134	\$ 3,836	\$ 3,872	\$ 3,910	\$ 3,910
4129200 Other regulatory fees	\$ 99	\$ 121	\$ 117	\$ 112	\$ 112
4129400 Other regulatory licenses and permits	\$ 1,021	\$ 1,028	\$ 949	\$ 956	\$ 975
4163000 Investment Income - Surplus Money Investments	\$ 31	\$ 70	\$ 55	\$ 45	\$ 32
4170400 Sale of fixed assets	\$ 4	\$ -	\$ -	\$ -	\$ -
4171400 Escheat - Unclaimed Checks, Warrants, Bonds, and Coupons	\$ 19	\$ 16	\$ 10	\$ 10	\$ 10
4171500 Escheat - Unclaimed Property	\$ -	\$ -	\$ 7	\$ 7	\$ 7
4172500 Miscellaneous revenues	\$ -	\$ 1	\$ -	\$ -	\$ -
Total Revenues, Transfers, and Other Adjustments	\$ 5,412	\$ 5,196	\$ 5,116	\$ 5,151	\$ 5,157
Total Resources	\$ 8,466	\$ 8,944	\$ 9,421	\$ 8,875	\$ 8,176
EXPENDITURE AND EXPENDITURE ADJUSTMENTS					
Expenditures:					
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 4,444	\$ 4,387	\$ 5,296	\$ 5,455	\$ 5,619
8880 Financial Information System for California (State Operations)	\$ 6	\$ 1	\$ -1	\$ -1	\$ -1
9892 Supplemental Pension Payments (State Operations)	\$ -	\$ 50	\$ 111	\$ 111	\$ 111
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 268	\$ 201	\$ 291	\$ 291	\$ 291
Total Expenditures and Expenditure Adjustments	\$ 4,718	\$ 4,639	\$ 5,697	\$ 5,856	\$ 6,020
FUND BALANCE					
Reserve for economic uncertainties	\$ 3,748	\$ 4,305	\$ 3,724	\$ 3,019	\$ 2,156
Months in Reserve	9.7	9.1	7.6	6.0	4.2

3315 - Household Movers Fund

Analysis of Fund Condition

Prepared 10.24.2019

(Dollars in Thousands)

2019-20 Workload & Revenue

	PY 2017-18	PY 2018-19	Budget Act CY 2019-20	BY 2020-21	BY+1 2021-22
BEGINNING BALANCE	\$ -	\$ -	\$ 2,364	\$ 2,284	\$ 2,177
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ -	\$ -	\$ 2,364	\$ 2,284	\$ 2,177
REV #					
Revenues:					
4121200 Delinquency Fees	\$ -	\$ 40	\$ 40	\$ 41	\$ 41
4127400 Renewal fees	\$ -	\$ 2,013	\$ 2,032	\$ 2,052	\$ 2,052
4129200 Other Regulatory Fees	\$ -	\$ 52	\$ 52	\$ 53	\$ 53
4129400 Other Regulatory Licenses and Permits	\$ -	\$ 57	\$ 57	\$ 57	\$ 57
4163000 Investment Income - Surplus Money Investments	\$ -	\$ -	\$ 34	\$ 32	\$ 30
4173000 Penalty Assessments - Other	\$ -	\$ -	\$ 2	\$ 2	\$ 2
Totals, Revenues	\$ -	\$ 2,162	\$ 2,217	\$ 2,237	\$ 2,235
Transfers and Other Adjustments					
Revenue Transfer from Household Mover's Fund (3315) to Motor Carriers Safety Improvement Fund (0293) per Public Utilities Code Section 5003.1	\$ -	\$ -21	\$ -21	\$ -	\$ -
Revenue Transfer from the Transportation Rate Fund (0412) to the Household Mover's Fund (3315) per 8660-011-0412 and 8660-401, Budget Act of 2018	\$ -	\$ 750	\$ -	\$ -	\$ -
Revenue Transfer from the Transportation Rate Fund (0412) to Household Movers Fund (3315) per 8660-401, Budget Act of 2018	\$ -	\$ 558	\$ -	\$ -	\$ -
Total Revenues, Transfers, and Other Adjustments	\$ -	\$ 3,449	\$ 2,196	\$ 2,237	\$ 2,235
Total Resources	\$ -	\$ 3,449	\$ 4,560	\$ 4,521	\$ 4,412
EXPENDITURE AND EXPENDITURE ADJUSTMENTS					
Expenditures:					
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ -	\$ 1,085	\$ 2,276	\$ 2,344	\$ 2,414
Total Expenditures and Expenditure Adjustments	\$ -	\$ 1,085	\$ 2,276	\$ 2,344	\$ 2,414
FUND BALANCE					
Reserve for economic uncertainties	\$ -	\$ 2,364	\$ 2,284	\$ 2,177	\$ 1,998
MONTHS IN RESERVE	0.0	12.5	11.7	10.8	9.6

Agenda Item 3a: Licensing Statistical Overview

LICENSING STATISTICS

1st Quarter

Electronic and Appliance Repair Registrations				
	2016-17	2017-18	2018-19	2019-20
Appliance Service Dealers	2,621	2,632	2,634	2,627
Electronic Service Dealer	5,013	4,914	4,849	4,514
Combination Electronic/Appliance Service Dealer	624	583	557	553
Service Contract Administrator	44	47	50	55
Service Contract Seller	11,575	12,633	12,026	11,915
Total Active EAR Registrations	19,877	20,809	20,152	19,664

Household Furnishings and Thermal Insulation Licenses				
	2016-17	2017-18	2018-19	2019-20
Furniture Retailers	2,282	2,057	2,121	2,053
Bedding Retailers	1,625	2,033	2,172	2,234
Furniture & Bedding Retailers	11,782	11,872	11,554	11,214
Custom Upholsterers	506	497	483	466
Supply Dealers	130	110	100	93
Importers (includes overseas Manufacturers)	4,779	5,096	5,339	5,589
Manufacturers	1,508	1,530	1,522	1,441
Sanitizers	12	12	14	24
Wholesalers	172	196	188	180
Thermal Insulation Manufacturers	116	109	107	114
Total Active HFTI Licenses	22,912	23,512	23,600	23,408

Geographic Breakdown of Importers/Manufacturers/Wholesalers as of 10/30/19	
Importer – California	514
Importer – Other States	649
Importer/Manufacturer – Overseas	4,413
Manufacturer – California	672
Manufacturer – Other States	746
Wholesalers - California	137
Wholesalers – Other States	43
Wholesalers – Overseas	2

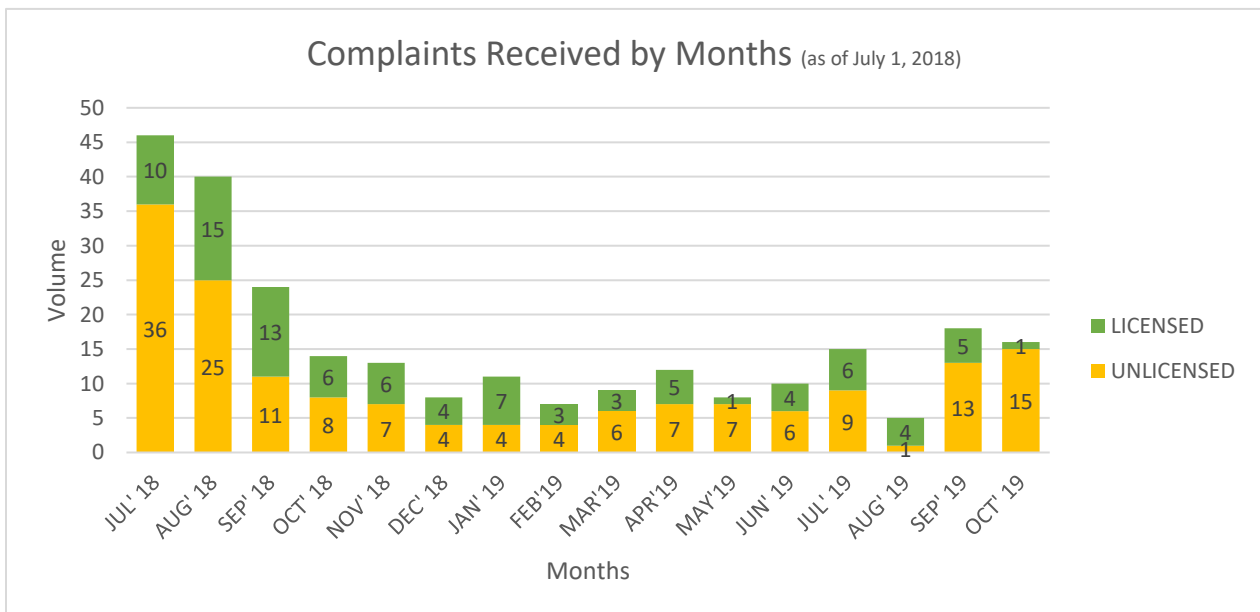
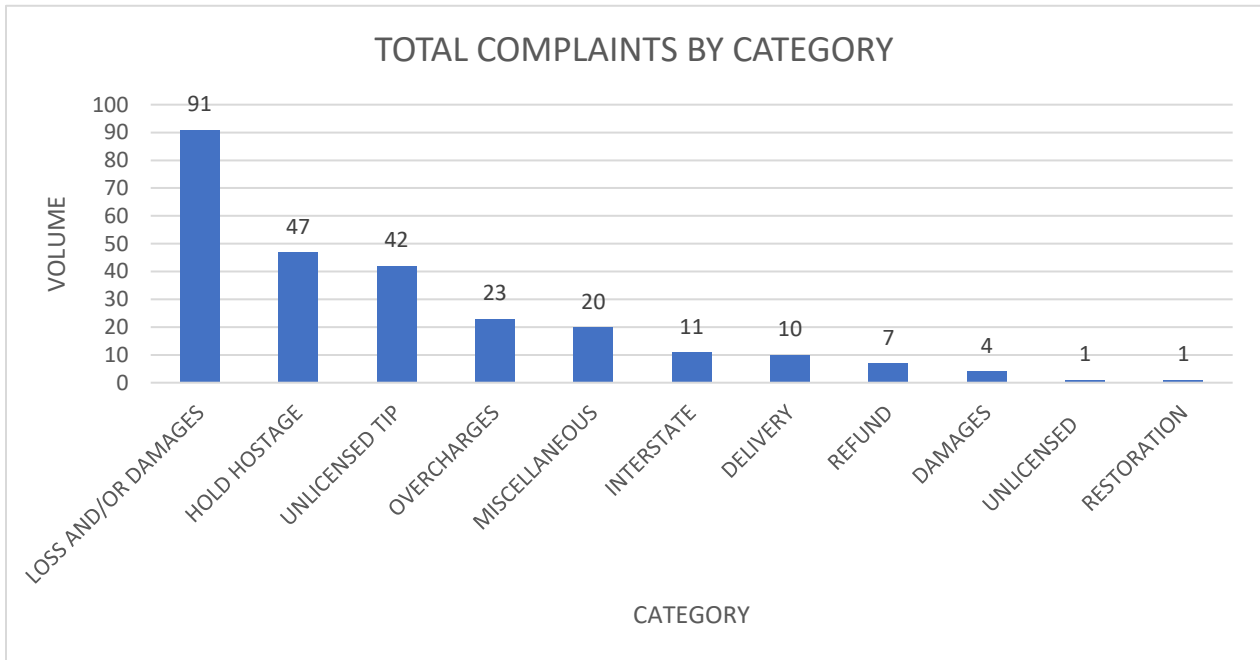
Household Movers Permits				
	2016-17	2017-18	2018-19	2019-20
Permits Issued			36	29
Exams Administered			36	34
Exam Pass Rate			64%	88%
Total Active HHM Permits			936	986

Agenda Item 3b: Consumer Complaints Statistical Overview

CONSUMER COMPLAINT STATISTICS

Household Movers

Household Movers Consumer Complaints		
Year	OPENED	CLOSED
2015-16		
2016-17		
2017-18		
2018-19	203	181
2019-20*	54	48



BEAR/BHFTI

Electronic and Appliance Repair Consumer Complaints		
Year	OPENED	CLOSED
2015-16	678	758
2016-17	582	582
2017-18	1019	1014
2018-19	528	500
2019-20*	185	77

Household Furnishings and Thermal Insulation Consumer Complaints		
Year	OPENED	CLOSED
2015-16	299	303
2016-17	237	248
2017-18	288	281
2018-19	158	157
2019-20*	79	38

Agenda Items 3c: Enforcement Statistical Overview

BEAR/BHFTI ENFORCEMENT STATISTICS

- There has been one case forwarded to the Attorney General’s Office in FY 2018/19 and two cases currently pending.
- There is currently one licensee on probation.
- 2019-20 stats are updated to October 2019.

TELEPHONE DISCONNECTS ORDERED			
Year	EAR	HFTI	Total
2015-16	78	19	97
2016-17	42	16	58
2017-18	48	17	65
2018-19	15	9	24
2019-20*	4	0	4

INTERNAL CASES (Investigations)						
OPENED				CLOSED		
Year	EAR	HFTI	Total	EAR	HFTI	Total
2015-16	1,048	584	1,632	1,109	607	1,716
2016-17	730	451	1,181	790	418	1,208
2017-18	624	355	979	705	388	1093
2018-19	400	215	615	434	216	650
2019-20*	133	41	174	126	37	163

CITATIONS ISSUED			
Year	EAR	HFTI	Total
2015-16	985	537	1,522
2016-17	684	402	1,086
2017-18	550	305	855
2018-19	384	230	614
2019-20*	137	37	174

Agenda Items 3d: Field Investigations Statistical Overview

HOUSEHOLD MOVERS INVESTIGATIONS STATISTICS

July 1, 2019 – October 31, 2019

Household Mover Cases Under Investigation	
Hold Hostage	13
Unlicensed Activity	80
Other	2
Total	95

Hold Hostage Situations	
Resolved	9
Pending	4*
Forwarded to Other Agencies	1*
Total	13

* One case pending with city District Attorney

Cease and Desist Letters Issued	
(Failure of Movers to Cease and Desist will result in Administrative Citations)	24

Agenda Item 3e: Laboratory Testing Statistical Overview

LAB STATISTICS

Data for FYTD 07/01/2019 - 10/30/2019

Type Test	Received 07/01/19-10/30/19	Completed Samples 07/01/19-10/30/19	
		Pass	Fail
TB117-2013	42	41 (93%)	3 (7%)
16 CFR 1633	11	7 (78%)	2 (22%)
Thermal Insulation	0	0	0
Bedding (No flammability tests)	9	20 (100%)	0
**Labeling	N/A	Pass 10 (14%), Minor Violation 41 (56%), Moderate Violation 19 (26%), Failure 3 (4%)	
Total	62	---	---

**This category includes labeling results for all products except for Thermal Insulation. From 07/01/2019-10/30/2019.

Type Test	Completed 07/01/19-10/30/19	Manufacturing Locations 07/01/19-10/30/19		
		USA-CA	USA-other states	Overseas
TB117-2013	44	14 (32%)	3 (7%)	27 (61%)
16 CFR 1633	9	9 (100%)	0	0

FR Chemical Labeling and Analysis

Samples Received with the Flame Retardant Chemical Statement (TB117-2013) 07/01/19-06/30/19				
"NO" Chemicals Checked	Contains Chemicals	No Box Checked	FR Doc Request Sent	DTSC Analysis Requested
39	4	0	8	8
91%	9%	0%		

Samples Analyzed with the "NO" Flame Retardant Chemical Statement 07/01/19-06/30/19				
Type Test	Pass		Fail	
	No.	%	No.	%
DTSC Analysis (8)*	3	38	---	---
FR Doc Review (8)**	---	---	---	---

*Review in progress for five components

**In progress

Agenda Item 4a: AB 5

Assembly Bill No. 5

CHAPTER 296

An act to amend Section 3351 of, and to add Section 2750.3 to, the Labor Code, and to amend Sections 606.5 and 621 of the Unemployment Insurance Code, relating to employment, and making an appropriation therefor.

[Approved by Governor September 18, 2019. Filed with Secretary of State September 18, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 5, Gonzalez. Worker status: employees and independent contractors.

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment insurance and disability insurance from the wages paid to their employees. Existing law defines “employee” for those purposes to include, among other individuals, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

This bill would state the intent of the Legislature to codify the decision in the *Dynamex* case and clarify its application. The bill would provide that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business. The bill, notwithstanding this provision, would provide that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*). The bill would exempt specified occupations from the application of *Dynamex*, and would instead provide that these occupations are governed by *Borello*. These exempt occupations would include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

The bill would also require the Employment Development Department, on or before March 1, 2021, and each March 1 thereafter, to issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. The bill would make the exemption for commercial fishermen applicable only until January 1, 2023, and the exemption for licensed

manicurists applicable only until January 1, 2022. The bill would authorize an action for injunctive relief to prevent employee misclassification to be brought by the Attorney General and specified local prosecuting agencies.

This bill would also redefine the definition of “employee” described above, for purposes of unemployment insurance provisions, to include an individual providing labor or services for remuneration who has the status of an employee rather than an independent contractor, unless the hiring entity demonstrates that the individual meets all of specified conditions, including that the individual performs work that is outside the usual course of the hiring entity’s business. Because this bill would increase the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission. The bill would also state that specified Labor Code provisions of the bill apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. The bill would additionally provide that the bill’s provisions do not permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to the bill’s enactment.

Existing provisions of the Labor Code make it a crime for an employer to violate specified provisions of law with regard to an employee. The Unemployment Insurance Code also makes it a crime to violate specified provisions of law with regard to benefits and payments.

By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a crime, thereby imposing 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: yes Fiscal Committee: yes Local Program: yes

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

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

*(a) On April 30, 2018, the California Supreme Court issued a unanimous decision in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*).*

(b) In its decision, the Court cited the harm to misclassified workers who lose significant workplace protections, the unfairness to employers who must compete with companies that misclassify, and the loss to the state of needed revenue from companies that use misclassification to avoid obligations such as payment of payroll taxes, payment of premiums for workers’ compensation, Social Security, unemployment, and disability insurance.

(c) The misclassification of workers as independent contractors has been a significant factor in the erosion of the middle class and the rise in income inequality.

(d) It is the intent of the Legislature in enacting this act to include provisions that would codify the decision of the California Supreme Court in Dynamex and would clarify the decision's application in state law.

(e) It is also the intent of the Legislature in enacting this act to ensure workers who are currently exploited by being misclassified as independent contractors instead of recognized as employees have the basic rights and protections they deserve under the law, including a minimum wage, workers' compensation if they are injured on the job, unemployment insurance, paid sick leave, and paid family leave. By codifying the California Supreme Court's landmark, unanimous Dynamex decision, this act restores these important protections to potentially several million workers who have been denied these basic workplace rights that all employees are entitled to under the law.

(f) The Dynamex decision interpreted one of the three alternative definitions of "employ," the "suffer or permit" definition, from the wage orders of the Industrial Welfare Commission (IWC). Nothing in this act is intended to affect the application of alternative definitions from the IWC wage orders of the term "employ," which were not addressed by the holding of Dynamex.

(g) Nothing in this act is intended to diminish the flexibility of employees to work part-time or intermittent schedules or to work for multiple employers.

SEC. 2. Section 2750.3 is added to the Labor Code, to read:

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

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

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

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

(2) Notwithstanding paragraph (1), any exceptions to the terms "employee," "employer," "employ," or "independent contractor," and any extensions of employer status or liability, that are expressly made by a provision of this code, the Unemployment Insurance Code, or in an applicable order of the Industrial Welfare Commission, including, but not limited to, the definition of "employee" in subdivision 2(E) of Wage Order No. 2, shall remain in effect for the purposes set forth therein.

*(3) If a court of law rules that the three-part test in paragraph (1) cannot be applied to a particular context based on grounds other than an express exception to employment status as provided under paragraph (2), then the determination of employee or independent contractor status in that context shall instead be governed by the California Supreme Court's decision in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (*Borello*).*

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

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

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

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

(4) A securities broker-dealer or investment adviser or their agents and representatives that are registered with the Securities and Exchange Commission or the Financial Industry Regulatory Authority or licensed by the State of California under Chapter 2 (commencing with Section 25210) or Chapter 3 (commencing with Section 25230) of Division 1 of Part 3 of Title 4 of the Corporations Code.

(5) A direct sales salesperson as described in Section 650 of the Unemployment Insurance Code, so long as the conditions for exclusion from employment under that section are met.

(6) A commercial fisherman working on an American vessel as defined in subparagraph (A) below.

(A) For the purposes of this paragraph:

(i) "American vessel" has the same meaning as defined in Section 125.5 of the Unemployment Insurance Code.

(ii) "Commercial fisherman" means a person who has a valid, unrevoked commercial fishing license issued pursuant to Article 3 (commencing with Section 7850) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code.

(iii) "Working on an American vessel" means the taking or the attempt to take fish, shellfish, or other fishery resources of the state by any means, and includes each individual aboard an American vessel operated for fishing purposes who participates directly or indirectly in the taking of these raw fishery products, including maintaining the vessel or equipment used aboard the vessel. However, "working on an American vessel" does not apply to anyone aboard a licensed commercial fishing vessel as a visitor or guest who does not directly or indirectly participate in the taking.

(B) For the purposes of this paragraph, a commercial fisherman working on an American vessel is eligible for unemployment insurance benefits if they meet the definition of “employment” in Section 609 of the Unemployment Insurance Code and are otherwise eligible for those benefits pursuant to the provisions of the Unemployment Insurance Code.

(C) On or before March 1, 2021, and each March 1 thereafter, the Employment Development Department shall issue an annual report to the Legislature on the use of unemployment insurance in the commercial fishing industry. This report shall include, but not be limited to, reporting the number of commercial fishermen who apply for unemployment insurance benefits, the number of commercial fishermen who have their claims disputed, the number of commercial fishermen who have their claims denied, and the number of commercial fishermen who receive unemployment insurance benefits. The report required by this subparagraph shall be submitted in compliance with Section 9795 of the Government Code.

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

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

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

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

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

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

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

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

(2) For purposes of this subdivision:

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

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

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

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

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

(iv) Graphic design.

(v) Grant writer.

(vi) Fine artist.

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

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

(ix) Services provided by a still photographer or photojournalist who do not license content submissions to the putative employer more than 35 times per year. This clause is not applicable to an individual who works on motion pictures, which includes, but is not limited to, projects produced for theatrical, television, internet streaming for any device, commercial productions, broadcast news, music videos, and live shows, whether distributed live or recorded for later broadcast, regardless of the distribution platform. For purposes of this clause a "submission" is one or more items or forms of content produced by a still photographer or photojournalist that: (I) pertains to a specific event or specific subject; (II) is provided for in a contract that defines the scope of the work; and (III) is accepted by and licensed to the publication or stock photography company and published or posted. Nothing in this section shall prevent a photographer or artist from displaying their work product for sale.

(x) Services provided by a freelance writer, editor, or newspaper cartoonist who does not provide content submissions to the putative employer more than 35 times per year. Items of content produced on a recurring basis related to a general topic shall be considered separate submissions for purposes of calculating the 35 times per year. For purposes of this clause, a "submission" is one or more items or forms of content by a freelance journalist that: (I) pertains to a specific event or topic; (II) is provided for in a contract that defines the scope of the work; (III) is accepted by the publication or company and published or posted for sale.

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

- (I) Sets their own rates, processes their own payments, and is paid directly by clients.*
- (II) Sets their own hours of work and has sole discretion to decide the number of clients and which clients for whom they will provide services.*
- (III) Has their own book of business and schedules their own appointments.*
- (IV) Maintains their own business license for the services offered to clients.*
- (V) If the individual is performing services at the location of the hiring entity, then the individual issues a Form 1099 to the salon or business owner from which they rent their business space.*
- (VI) This subdivision shall become inoperative, with respect to licensed manicurists, on January 1, 2022.*

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

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

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

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

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

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

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

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

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

(E) The business service provider maintains a business location that is separate from the business or work location of the contracting business.

(F) The business service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.

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

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

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

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

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

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

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

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

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

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

(1) The subcontract is in writing.

(2) The subcontractor is licensed by the Contractors State License Board and the work is within the scope of that license.

(3) If the subcontractor is domiciled in a jurisdiction that requires the subcontractor to have a business license or business tax registration, the subcontractor has the required business license or business tax registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

reimbursed by the trucking company for the reasonable expense incurred for the use of the employee owned truck.

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

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

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

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

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

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

(E) The service provider provides its own tools and supplies to perform the services.

(F) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed for the client.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) In addition to any other remedies available, an action for injunctive relief to prevent the continued misclassification of employees as independent contractors may be prosecuted against the putative employer in a court of competent jurisdiction by the Attorney General or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association.

SEC. 3. Section 3351 of the Labor Code, as amended by Section 33 of Chapter 38 of the Statutes of 2019, is amended to read:

3351. “Employee” means every person in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes:

(a) Aliens and minors.

(b) All elected and appointed paid public officers.

(c) All officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. An officer or member of a board of directors may elect to be excluded from coverage in accordance with paragraph (16), (18), or (19) of subdivision (a) of Section 3352.

(d) Except as provided in paragraph (8) of subdivision (a) of Section 3352, any person employed by the owner or occupant of a residential dwelling whose duties are incidental to the ownership, maintenance, or use of the dwelling, including the care and supervision of children, or whose duties are personal and not in the course of the trade, business, profession, or occupation of the owner or occupant.

(e) All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract.

(f) All working members of a partnership or limited liability company receiving wages irrespective of profits from the partnership or limited liability company. A general partner of a partnership or a managing member of a limited liability company may elect to be excluded from coverage in accordance with paragraph (17) of subdivision (a) of Section 3352.

(g) A person who holds the power to revoke a trust, with respect to shares of a private corporation held in trust or general partnership or limited liability company interests held in trust. To the extent that this person is deemed to be an employee described in subdivision (c) or (f), as applicable, the person may also elect to be excluded from coverage as described in subdivision (c) or (f), as applicable, if that person otherwise meets the criteria for exclusion, as described in Section 3352.

(h) A person committed to a state hospital facility under the State Department of State Hospitals, as defined in Section 4100 of the Welfare and Institutions Code, while engaged in and assigned work in a vocation rehabilitation program, including a sheltered workshop.

(i) Beginning on July 1, 2020, any individual who is an employee pursuant to Section 2750.3. This subdivision shall not apply retroactively.

SEC. 4. Section 606.5 of the Unemployment Insurance Code is amended to read:

606.5. (a) Whether an individual or entity is the employer of specific employees shall be determined ~~under common law rules applicable in determining the employer-employee relationship,~~ pursuant to subdivision (b) of Section 621, except as provided in subdivisions (b) and (c).

(b) As used in this section, a “temporary services employer” and a “leasing employer” is an employing unit that contracts with clients or customers to supply workers to perform services for the client or customer and performs all of the following functions:

- (1) Negotiates with clients or customers for such matters as time, place, type of work, working conditions, quality, and price of the services.
- (2) Determines assignments or reassignments of workers, even though workers retain the right to refuse specific assignments.
- (3) Retains the authority to assign or reassign a worker to other clients or customers when a worker is determined unacceptable by a specific client or customer.
- (4) Assigns or reassigns the worker to perform services for a client or customer.
- (5) Sets the rate of pay of the worker, whether or not through negotiation.
- (6) Pays the worker from its own account or accounts.
- (7) Retains the right to hire and terminate workers.

(c) If an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, the individual or entity is the employer of the employee who performs the services. If an individual or entity contracts to supply an employee to perform services for a client or customer and is not a leasing employer or a temporary services employer, the client or customer is the employer of the employee who performs the services. An individual or entity that contracts to supply an employee to perform services for a customer or client and pays wages to the employee for the services, but is not a leasing employer or a temporary services employer, pays the wages as the agent of the employer.

(d) In circumstances which are in essence the loan of an employee from one employer to another employer wherein direction and control of the manner and means of performing the services changes to the employer to whom the employee is loaned, the loaning employer shall continue to be the employer of the employee if the loaning employer continues to pay remuneration to the employee, whether or not reimbursed by the other employer. If the employer to whom the employee is loaned pays remuneration to the employee for the services performed, that employer shall be considered the employer for the purposes of any remuneration paid to the employee by the employer, regardless of whether the loaning employer also pays remuneration to the employee.

SEC. 5. Section 621 of the Unemployment Insurance Code is amended to read:

621. “Employee” means all of the following:

- (a) Any officer of a corporation.
- (b) Any individual ~~who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.~~ *providing labor or services for remuneration has the status of an employee rather than an independent contractor unless the hiring entity demonstrates all of the following conditions:*

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

(2) The individual performs work that is outside the usual course of the hiring entity's business.

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

(c) (1) Any individual, other than an individual who is an employee under subdivision (a) or (b), who performs services for remuneration for any employing unit if the contract of service contemplates that substantially all of those services are to be performed personally by that individual either:

(A) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for ~~his or her~~ *their* principal.

(B) As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, ~~his or her~~ *their* principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

(C) As a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by that person that are required to be returned to that person or a ~~person designated by him or her~~ *designee thereof*.

(2) An individual shall not be included in the term "employee" under the provisions of this subdivision if that individual has a substantial investment in facilities used in connection with the performance of those services, other than in facilities for transportation, or if the services are in the nature of a single transaction not part of a continuing relationship with the employing unit for whom the services are performed.

(d) Any individual who is an employee pursuant to Section 601.5 or 686.

(e) Any individual whose services are in subject employment pursuant to an election for coverage under any provision of Article 4 (commencing with Section 701) of this chapter.

(f) Any member of a limited liability company that is treated as a corporation for federal income tax purposes.

SEC. 6. No provision of this measure shall permit an employer to reclassify an individual who was an employee on January 1, 2019, to an independent contractor due to this measure's enactment.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Agenda Item 4b: AB 496

Assembly Bill No. 496

CHAPTER 351

An act to amend Sections 23.8, 23.9, 25, 27, 28, 30, 31, 101, 101.7, 102.3, 103, 105.5, 106, 107, 108.5, 111, 114, 114.3, 115.5, 115.6, 116, 119, 120, 121, 124, 125, 125.3, 125.6, 125.9, 127, 129, 130, 132, 136, 137, 138, 144, 151, 152, 152.6, 153, 156.1, 158, 159.5, 161, 210, 328, 450, and 450.3 of the Business and Professions Code, relating to business and professions.

[Approved by Governor September 27, 2019. Filed with Secretary of State September 27, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 496, Low. Business and professions.

Under existing law, the Department of Consumer Affairs, which is under the control of the director of the Department of Consumer Affairs, is comprised of various boards, as defined, that license and regulate various professions and vocations. With respect to the Department of Consumer Affairs, existing law provides that the Governor has power to remove from office any member of any board appointed by the Governor for specified reasons, including incompetence.

This bill would instead provide that the appointing authority has power to remove a board member from office for those specified reasons.

Existing law authorizes the director to audit and review, upon the director's own initiative or upon the request of a consumer or licensee, inquiries and complaints regarding, among other things, dismissals of disciplinary cases of specified licensees and requires the director to report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually regarding any findings from such an audit or review.

This bill would instead require the director to report to the Chairpersons of the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee.

Existing law defines the term "licentiate" to mean any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated or referred to, as specified.

This bill would instead define "licensee" to mean any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated or referred to, as specified, and would provide that any reference to licentiate be deemed to refer to licensee.

This bill would make other conforming and nonsubstantive changes, including replacing gendered terms with nongendered terms, updating cross-references, and deleting obsolete provisions.

This bill would provide that any section of any act that is enacted by the Legislature during the 2019 calendar year that takes effect on or before January 1, 2020, and affects any section of law amended by this bill, would prevail over this bill, whether that act is enacted prior to, or subsequent to, the enactment of this bill.

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

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

SECTION 1. Section 23.8 of the Business and Professions Code is amended to read:

23.8. ~~“Licentiate”~~ *“Licensee”* means any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in Sections 1000 and 3600.

Any reference to licentiate in this code shall be deemed to refer to licensee.

SEC. 2. Section 23.9 of the Business and Professions Code is amended to read:

23.9. Notwithstanding any other provision of this code, any individual who, while imprisoned in a state prison or other correctional institution, is trained, in the course of a rehabilitation program approved by the particular licensing agency concerned and provided by the prison or other correctional institution, in a particular skill, occupation, or profession for which a state license, certificate, or other evidence of proficiency is required by this code shall not, when released from the prison or institution, be denied the right to take the next regularly scheduled state examination or any examination thereafter required to obtain the license, certificate, or other evidence of proficiency and shall not be denied such license, certificate, or other evidence of proficiency, because of ~~his-that individual’s~~ imprisonment or the conviction from which the imprisonment resulted, or because ~~he-obtained his-the individual obtained the individual’s~~ training in prison or in the correctional institution, if the licensing agency, upon recommendation of the Adult Authority or the Department of the Youth Authority, as the case may be, finds that ~~he-the individual~~ is a fit person to be licensed.

SEC. 3. Section 25 of the Business and Professions Code is amended to read:

25. Any person applying for a license, registration, or the first renewal of a license, after the effective date of this section, as a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed professional clinical counselor shall, in addition to any other requirements, show by evidence satisfactory to the agency regulating the business or profession, that ~~he-or she has-they have~~ completed training in human sexuality as a condition of licensure. The training shall be creditable toward continuing education requirements as deemed appropriate by the agency regulating the business or profession, and the course shall not exceed more than 50 contact hours.

The Board of Psychology shall exempt from the requirements of this section any persons whose field of practice is such that they are not likely to have use for this training.

“Human sexuality” as used in this section means the study of a human being as a sexual being and how ~~he-or she~~ *a human being* functions with respect thereto.

The content and length of the training shall be determined by the administrative agency regulating the business or profession and the agency shall proceed immediately upon the effective date of this section to determine what training, and the quality of staff to provide the training, is available and shall report its determination to the Legislature on or before July 1, 1977.

If a licensing board or agency proposes to establish a training program in human sexuality, the board or agency shall first consult with other licensing boards or agencies that have established

or propose to establish a training program in human sexuality to ensure that the programs are compatible in scope and content.

SEC. 4. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the ~~Internet~~ *internet* information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the ~~Internet~~ *internet* shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of ~~his or her~~ *the licensee's* home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as ~~his or her~~ *the licensee's* address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the ~~Internet.~~ *internet.*

(b) In providing information on the ~~Internet,~~ *internet,* each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Household Goods and Services shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, ~~and~~ *—service contract administrators. administrators, and household movers.*

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also

disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

~~(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.~~

~~(13)~~ (12) The Acupuncture Board shall disclose information on its licensees.

~~(14)~~ (13) The Board of Behavioral Sciences shall disclose information on its licensees and registrants.

~~(15)~~ (14) The Dental Board of California shall disclose information on its licensees.

~~(16)~~ (15) The State Board of Optometry shall disclose information on its licensees and registrants.

~~(17)~~ (16) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

~~(18)~~ (17) The Veterinary Medical Board shall disclose information on its licensees, registrants, and permitholders.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Cannabis Control shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

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To eliminate waste, the Bureau is only publishing the bill language up to the sections that impact the Bureau. If you would like the full text of [AB 5](#) as enacted, please visit: http://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB496.

Agenda Item 4c: AB 1296

Assembly Bill No. 1296

CHAPTER 626

An act to add Part 12.3 (commencing with Section 15925) to Division 3 of Title 2 of the Government Code, and to amend Sections 329 and 1095 of the Unemployment Insurance Code, relating to the underground economy.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019]

LEGISLATIVE COUNSEL'S DIGEST

AB 1296, Gonzalez. Joint Enforcement Strike Force on the Underground Economy: Labor Enforcement Task Force.

Existing law, until January 1, 2019, established the Revenue Recovery and Collaborative Enforcement Team as a pilot program consisting of a team of agencies charged with specified duties that included developing a plan to document, review, and evaluate data and complaints, evaluating the benefits of a processing center to receive and analyze data, share complaints, and research leads, and providing agencies with investigative leads to combat criminal tax evasion associated with the underground economy.

Existing law establishes the Joint Enforcement Strike Force on the Underground Economy to combat tax violations and cash-pay employment, and requires the membership of the strike force to be composed of representatives of the Employment Development Department, the Department of Consumer Affairs, the Department of Industrial Relations, and the Department of Insurance. Existing law invites other agencies that are not part of the administration, such as the Franchise Tax Board, the State Board of Equalization, and the Department of Justice, to participate in the strike force.

This bill would expand the required membership of the strike force to include the Department of Justice, the California Department of Tax and Fee Administration, and the Franchise Tax Board. The bill would authorize the strike force to invite other specified agencies to serve in an advisory capacity. The bill would expand the duties of the strike force to include enforcement activities regarding labor, tax, insurance, and licensing law violators operating in the underground economy and authorize the provision of investigative leads to participating agencies. The bill would provide for the exchange of certain information between strike force member agencies, to the extent permitted by state and federal laws and regulations, and for the confidentiality of that information. The bill would also authorize the strike force member agencies to cooperate and share any appropriate information with the Labor Enforcement Task Force, as specified.

The bill would authorize a strike force member agency, for certain cases that involve tax or fee administration associated with underground economic activities, to request specified information from the Employment Development Department, the California Department of Tax and Fee Administration, and the Franchise Tax Board and would require those agencies to provide that information for prescribed enforcement purposes. The bill would provide for the confidentiality of such information.

The bill would require the Department of Justice, at a minimum, to maintain 2 multiagency Tax Recovery in the Underground Economy Criminal Enforcement Program investigative teams, formerly known as the Tax Recovery and Criminal Enforcement Task Force, in Sacramento and

Los Angeles. The bill would require the investigative teams to continue their collaboration for the recovery of lost revenues to the state by investigating and prosecuting criminal offenses in the state's underground economy.

Under existing law, the information obtained in the administration of the Unemployment Insurance Code is for the exclusive use and information of the Director of Employment Development in the discharge of their duties and is confidential. However, existing law authorizes the use of the information for specified purposes. Existing law makes it a crime for any person to knowingly access, use, or disclose this confidential information without authorization.

This bill would additionally authorize the use of the information (1) to enable the Joint Enforcement Strike Force on the Underground Economy and the Labor Enforcement Task Force to carry out their duties and (2) to provide information requested by a strike force member agency pursuant to the bill. Because the bill would expand the group of persons who can be convicted for knowingly accessing, using, or disclosing this information without authorization, it would expand the scope of an existing crime and therefore 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.

This bill would incorporate additional changes to Section 1095 of the Unemployment Insurance Code proposed by AB 593 and AB 1340 to be operative only if this bill and either or both of those bills are enacted and this bill is enacted last.

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

SECTION 1. *Part 12.3 (commencing with Section 15925) is added to Division 3 of Title 2 of the Government Code, to read:*

PART 12.3. Underground Economic Activities

15925.(a) *For a case, including, but not limited to, a Joint Enforcement Strike Force on the Underground Economy case, that involves tax or fee administration associated with underground economic activities, including known or suspected felony violations involving tax-related or fee-related crimes, an agency listed in subdivision (a) of Section 329 of the Unemployment Insurance Code may request information pursuant to subdivision (b) from the Employment Development Department, the California Department of Tax and Fee Administration, and the Franchise Tax Board.*

(b) Upon request of an agency listed in subdivision (a) of Section 329 of the Unemployment Insurance Code, the Employment Development Department, the California Department of Tax and Fee Administration, and the Franchise Tax Board shall fully and timely provide the requesting agency with intelligence, data, including confidential tax and fee information, documents, information, complaints, reports, analysis, findings, or lead referrals for the following purposes:

(1) To assess leads or referrals in order to determine if an investigation is warranted.

(2) To conduct investigations.

(3) To determine restitution owed to the state.

(4) To prosecute violations.

(5) To conduct data analytics associated with assessing a lead or referral or conducting an investigation pursuant to the Joint Enforcement Strike Force on the Underground Economy.

(c) (1) Any person from an agency listed in subdivision (a) of Section 329 of the Unemployment Insurance Code who received confidential information obtained pursuant to this section shall not divulge, or make known in any manner not provided by law, any of the confidential information received by or reported to the agency. Confidential information authorized to be provided pursuant to this section shall retain its confidential status and shall otherwise remain subject to the confidentiality provisions contained in, but not limited to, all of the following provisions:

(A) Section 11183 as that section pertains to the Department of Justice.

(B) Sections 1094, 1095, and 2111 of the Unemployment Insurance Code as those sections pertain to the Employment Development Department. Part 603 of Title 20 of the Code of Federal Regulations as those provisions pertain to the disclosure of confidential unemployment compensation information.

(C) Sections 19542, 19542.1, and 19542.3 of the Revenue and Taxation Code as those sections pertain to the Franchise Tax Board.

(D) Section 15619 of this code, Section 42464.8 of the Public Resources Code, and Sections 7056, 7056.5, 8255, 9255, 9255.1, 30455, 32455, 32457, 38705, 38706, 43651, 45981, 45982, 45983, 45984, 46751, 50159, 50160, 50161, 55381, 60608, and 60609 of the Revenue and Taxation Code, as those sections pertain to the California Department of Tax and Fee Administration.

(E) Any other information confidentiality provisions in federal and state law.

(2) Except for restrictions imposed by federal law, nothing in this subdivision shall be construed to prohibit the sharing of confidential information authorized pursuant to subdivision (b).

(d) Information requested pursuant to this section shall not include federal tax data without authorization from the Internal Revenue Service.

15926. (a) The Department of Justice, at a minimum, shall maintain the two multiagency Tax Recovery in the Underground Economy Criminal Enforcement Program investigative teams, formerly known as the Tax Recovery and Criminal Enforcement Task Force, in Sacramento and Los Angeles. These investigative teams, including the Department of Justice, the Employment Development Department, the California Department of Tax and Fee Administration, and the Franchise Tax Board shall continue their collaboration for the recovery of lost revenues to the state by investigating and prosecuting criminal offenses in the state's underground economy, including, but not limited to, tax-related and fee-related crimes such as tax evasion or tax fraud.

(b) For the purpose of this section, "collaboration" means the following:

(1) Each agency works with the investigative teams to assess leads.

(2) When a case may involve the jurisdiction of an agency, the agency assists the investigative team with the investigation and prosecution of the case.

SEC. 2. Section 329 of the Unemployment Insurance Code is amended to read:

329. (a) The director, or ~~his or her~~ *the director's* designee, shall serve as Chairperson of the Joint Enforcement Strike Force on the Underground Economy provided for in Executive Order W-66-93. The strike force shall include, but not be limited to, representatives of the Employment Development Department, the Department of *Justice, the Department of* Consumer Affairs, the Department of Industrial Relations, ~~and the Department of Insurance. Other agencies that are not part of the administration, such as the California Department of Tax and Fee Administration, the Franchise Tax Board, the State Board of Equalization, and the Department of Justice, are encouraged to participate in the strike force.~~ *Insurance.*

(b) *The strike force may invite the following state agencies to serve in an advisory capacity: the California Health and Human Services Agency, the Department of Motor Vehicles, the Department of Alcoholic Beverage Control, and the Department of the California Highway Patrol.*

~~(b)~~ (c) The strike force shall have the following duties:

(1) *(A)* To facilitate and encourage the development and sharing of information by the participating agencies necessary to combat the underground ~~economy~~. *economy including the enforcement activities regarding labor, tax, insurance, and licensing law violators operating in the underground economy. Duly authorized representatives of the strike force employed by an agency listed in subdivision (a) shall exchange intelligence, data, documents, confidential information, or lead referrals pursuant to this section, to the extent permitted by state and federal laws and regulations.*

(B) Any person who is involved or has been involved in the strike force pursuant to this section and at any time has obtained confidential information shall not divulge, or make known in any manner not allowed by law, any of the confidential information received by or reported to members of the strike force. Confidential information authorized to be exchanged pursuant to this section shall retain its confidential status and shall otherwise remain subject to the confidentiality provisions contained in applicable federal and state laws.

(C) Participating agencies may also cooperate and share any appropriate information with the Labor Enforcement Task Force established pursuant to Assembly Bill 1464 of the 2011–12 Regular Session (Chapter 21 of the Statutes of 2012), to the extent related to the underground economy including the enforcement activities regarding labor, tax, insurance, and licensing law violators operating in the underground economy permitted by state and federal laws and regulations. Members of the Labor Enforcement Task Force who have obtained confidential information pursuant to this section shall not divulge, or make known in any manner not allowed by law, any of the confidential information received from the strike force.

(2) To improve the coordination of activities among the participating agencies.

(3) To develop methods to pool, focus, and target the enforcement resources of the participating agencies in order to deter tax evasion and maximize recoveries from blatant tax evaders and violators of cash-pay reporting laws.

(4) To reduce enforcement costs wherever possible by eliminating duplicative audits and investigations.

~~(c)~~ *(d)* In addition, the strike force shall be empowered to:

(1) Form joint enforcement teams when appropriate to utilize the collective investigative and enforcement capabilities of the participating members.

(2) Establish committees and rules of procedure to carry out the activities of the strike force.

(3) To solicit the cooperation and participation of district attorneys and other state and local agencies in carrying out the objectives of the strike force.

(4) Establish procedures for soliciting referrals from the public, including, but not limited to, an advertised telephone hotline.

(5) Develop procedures for improved information sharing among the participating ~~agencies~~. *agencies and the Labor Enforcement Task Force*, such as shared automated information database systems, the use of a common business identification number, and a centralized debt collection ~~system~~. *system, to the extent permitted by state and federal laws and regulations.*

(6) Develop procedures to permit the participating agencies to use ~~more efficient and effective civil sanctions in lieu of criminal actions wherever possible~~. *civil sanctions.*

(7) Provide participating agencies, including the Department of Justice, with investigative leads where collaboration opportunities exist for felony-level criminal investigations, including, but not limited to, referring leads to agencies with appropriate enforcement jurisdiction, and to pursue criminal prosecution when unscrupulous businesses violate the state's labor, employment, licensing, insurance, and tax laws with respect to the underground economy.

~~(7)~~ *(8)* Evaluate, based on its activities, the need for any statutory change to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve the ability of the participating agencies to audit, investigate, and prosecute tax and cash-pay violations.

- (C) Deter violations and improve voluntary compliance.
- (D) Eliminate duplication and improve cooperation among the participating agencies.
- (E) Establish shareable information databases.
- (F) Establish a common business identification number for use by participating agencies.
- (G) Establish centralized, automated debt collection services for the participating agencies.
- ~~(H) Strengthen civil penalty procedures to allow the strike force to emphasize civil rather than criminal penalties wherever possible.~~
- ~~(d)~~ (e) The strike force shall report to the Governor and the Legislature annually during the period of its existence, by June 30, of each year, regarding its activities.
The report shall include, but not be limited to, all of the following:
 - (1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited, investigated, or prosecuted through civil action or referred for criminal prosecution.
 - (2) Actions taken by the strike force to publicize its activities.
 - (3) Efforts made by the strike force to establish an advertised telephone hotline for receiving referrals from the public.
 - (4) Procedures for improving information sharing among the agencies represented on the strike force.
 - (5) Steps taken by the strike force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.
 - (6) Recommendations for any statutory changes needed to accomplish the goals described in paragraph ~~(7)~~ (8) of subdivision (c).

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To eliminate waste, the Bureau is only publishing the bill language up to the sections that impact the Bureau. If you would like the full text of [AB 1296](#) as enacted, please visit: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1296.

Agenda Item 4d: SB 358

Senate Bill No. 358

CHAPTER 643

An act to amend Section 2810.3 of the Labor Code, to amend Sections 2036, 2113, 36627, and 36633 of the Streets and Highways Code, and to amend Sections 27150.2, 27151, and 34500 of, and to repeal Sections 16020.1 and 16020.2 of, the Vehicle Code, relating to transportation.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019]

LEGISLATIVE COUNSEL'S DIGEST

SB 358, Committee on Transportation. Transportation.

(1) Existing law creates the Road Maintenance and Rehabilitation Program and, after certain allocations for the program are made, requires the remaining funds available for the program to be allocated 50% for maintenance of the state highway system or for purposes of the state highway operation and protection program and 50% for apportionment to cities and counties by the Controller pursuant to a specified formula. Before receiving an apportionment of funds under the program from the Controller in a fiscal year, existing law requires a city or county to submit to the California Transportation Commission a list of projects proposed to be funded with these funds. In order to receive an allocation or apportionment of these funds, existing law requires the city or county to annually expend a certain minimum amount from its general fund for street, road, and highway purposes. Existing law authorizes the Controller to perform audits to ensure compliance with this expenditure requirement and requires a city or county that has not complied with this expenditure requirement to reimburse the state the funds it received during the fiscal year it was not in compliance.

This bill would require, for an eligible city or county that has not met its minimum expenditure requirement, as described above, the Controller to withhold from its apportionment for a fiscal year following an audit an amount up to the amount of funds that the city or county received during the fiscal year that was audited. The bill would require that the amount withheld be reallocated or reapportioned to other cities or counties who meet the minimum expenditure requirement in one annual payment, as specified, and would also require, if the amount to be apportioned is less than the amount to be withheld, that the city or county reimburse the state for the difference between the amount withheld and the apportionment that was received in the fiscal year that was audited. The bill would require, if the city or county is ineligible for an apportionment, the city or county to reimburse the state in an amount equal to the allocation or apportionment it received in the fiscal year that it was audited. The bill would authorize the Controller to adopt rules, regulations, and procedures necessary to carry out the purposes of these provisions.

(2) Article XIX of the California Constitution restricts the use of excise tax revenues imposed by the state on fuels used in motor vehicles on public highways to highway and certain mass transit purposes and provides for the deposit of these fuel excise tax revenues in the Highway Users Tax Account for apportionments to cities, among other things. Existing law prohibits apportionments from the account to a city pursuant to specified provisions from being made unless the city has set up by ordinance a special gas tax street improvement fund, and requires the apportionment of those moneys to be deposited into that fund.

This bill would delete the reference to those specified provisions providing for apportionments from the account, thereby prohibiting any and all apportionments from the account to a city from

being made unless the city has set up by ordinance a special gas tax street fund, and thereby requiring the apportionment of those moneys to be deposited into that fund.

(3) Existing law provides that, on and after January 1, 2020, provisions requiring an applicant for registration renewal to submit a form issued by the insurer as evidence that the applicant is in compliance with the financial responsibility laws of the state do not apply to vehicle owners with a residence address in the County of Los Angeles or in the City and County of San Francisco at the time of registration renewal. Existing law also provides that, on and after January 1, 2020, provisions requiring a person who drives a motor vehicle to provide evidence of financial responsibility for the vehicle upon demand of a peace officer or traffic collision investigator do not apply to a person who drives a motor vehicle upon a highway in the County of Los Angeles or in the City and County of San Francisco.

This bill would repeal those provisions.

(4) Existing law requires every motor vehicle subject to registration to be equipped with an adequate muffler in constant operation and properly maintained to prevent any excessive or unusual noise and prohibits a muffler or exhaust system from being equipped with a cutout, bypass, or similar device. Existing law further prohibits the modification of an exhaust system of a motor vehicle in a manner that will amplify or increase the noise emitted by the motor of the vehicle so that the vehicle exceeds existing noise limits when tested in accordance with specified standards.

This bill would update the noise level testing standards described above to reflect a more recent standard.

(5) Existing law requires the Department of Motor Vehicles (DMV) to regulate the safe operation of certain vehicles, including, but not limited to, motortrucks of 3 or more axles that are more than 10,000 pounds gross vehicle weight rating, truck tractors, and any motortruck regulated by the DMV, the Public Utilities Commission, or the United States Secretary of Transportation.

This bill would additionally require the DMV to regulate the safe operation of motortrucks regulated by the Department of Consumer Affairs, and would remove motortrucks regulated by the Public Utilities Commission from that regulation by the DMV.

(6) The bill would make other technical, nonsubstantive changes.

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

SECTION 1. Section 2810.3 of the Labor Code is amended to read:

2810.3. (a) As used in this section:

(1) (A) "Client employer" means a business entity, regardless of its form, that obtains or is provided workers to perform labor within its usual course of business from a labor contractor.

(B) "Client employer" does not include any of the following:

(i) A business entity with a workforce of fewer than 25 workers, including those hired directly by the client employer and those obtained from, or provided by, any labor contractor.

(ii) A business entity with five or fewer workers supplied by a labor contractor or labor contractors to the client employer at any given time.

(iii) The state or any political subdivision of the state, including any city, county, city and county, or special district.

- (2) "Labor" has the same meaning provided by Section 200.
- (3) "Labor contractor" means an individual or entity that supplies, either with or without a contract, a client employer with workers to perform labor within the client employer's usual course of business. "Labor contractor" does not include any of the following:
- (A) A bona fide nonprofit, community-based organization that provides services to workers.
 - (B) A bona fide labor organization or apprenticeship program or hiring hall operated pursuant to a collective bargaining agreement.
 - (C) A motion picture payroll services ~~company~~ *company*, as defined in subparagraph (A) of paragraph (4) of subdivision (f) of Section 679 of the Unemployment Insurance Code.
 - (D) A third party who is a party to an employee leasing arrangement, as defined by Rule 4 of Section V of the California Workers' Compensation Experience Rating Plan-1995 (Section 2353.1 of Title 10 of the California Code of Regulations), as it read on January 1, 2014, except those arrangements described in subrule d of Rule 4 of Section V, if the employee leasing arrangement contractually obligates the client employer to assume all civil legal responsibility and civil liability under this act.
- (4) "Wages" has the same meaning provided by Section 200 and all sums payable to an employee or the state based upon any failure to pay wages, as provided by law.
- (5) "Worker" does not include an employee who is exempt from the payment of an overtime rate of compensation for executive, administrative, and professional employees pursuant to wage orders by the Industrial Welfare Commission described in Section 515.
- (6) "Usual course of business" means the regular and customary work of a business, performed within or upon the premises or worksite of the client employer.
- (b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:
- (1) The payment of wages.
 - (2) Failure to secure valid workers' compensation coverage as required by Section 3700.
- (c) A client employer shall not shift to the labor contractor any legal duties or liabilities under Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.
- (d) At least 30 days prior to filing a civil action against a client employer for violations covered by this section, a worker or ~~his or her~~ *the worker's* representative shall notify the client employer of violations under subdivision (b).
- (e) Neither the client employer nor the labor contractor may take any adverse action against any worker for providing notification of violations or filing a claim or civil action.
- (f) The provisions of subdivisions (b) and (c) are in addition to, and shall be supplemental of, any other theories of liability or requirement established by statute or common law.
- (g) This section does not prohibit a client employer from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a labor contractor for liability created by acts of a labor contractor.
- (h) This section does not prohibit a labor contractor from establishing, exercising, or enforcing by contract any otherwise lawful remedies against a client employer for liability created by acts of a client employer.
- (i) Upon request by a state enforcement agency or department, a client employer or a labor contractor shall provide to the agency or department any information within its possession, custody, or control required to verify compliance with applicable state laws. Upon request, these records shall be made available promptly for inspection, and the state agency or department shall be permitted to copy them. This subdivision does not require the disclosure of information that is not otherwise required to be disclosed by employers upon request by a state enforcement agency or department.
- (j) The Labor Commissioner may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (i) that are under ~~his or her~~ *the Labor Commissioner's* jurisdiction.

(k) The Division of Occupational Safety and Health may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (c) and (i) that are under its jurisdiction.

(l) The Employment Development Department may adopt regulations and rules of practice and procedure necessary to administer and enforce the provisions of subdivisions (b) and (i) that are under its jurisdiction.

(m) A waiver of this section is contrary to public policy, and is void and unenforceable.

(n) This section ~~shall not be interpreted to~~ *does not* impose individual liability on a homeowner for labor or services received at the home or the owner of a home-based business for labor or services received at the home.

(o) This section ~~shall not be interpreted to~~ *does not* impose liability on a client employer for the use of an independent contractor other than a labor contractor or to change the definition of independent contractor.

(p) This section ~~shall not be interpreted to~~ *does not* impose liability on the following:

(1) A client employer that is not a motor carrier of property based solely on the employer's use of a third-party motor carrier of property with interstate or intrastate operating authority to ship or receive freight.

(2) A client employer that is a motor carrier of property subcontracting with, or otherwise engaging, another motor carrier of property to provide transportation services using its own employees and commercial motor vehicles, as defined in Section 34601 of the Vehicle Code.

(3) A client employer that is not a household ~~goods-carrier-mover~~ based solely on the employer's use of a third-party household ~~goods-carrier-mover~~ permitted by the ~~Public Utilities Commission-Bureau of Household Goods and Services~~ pursuant to Chapter ~~7 3.1~~ (commencing with Section ~~5404~~ *19225*) of Division ~~2 8~~ of the ~~Public Utilities-Business and Professions~~ Code to move household goods.

(4) A client employer that is a household ~~goods-carrier-mover~~ permitted by the ~~Public Utilities Commission-Bureau of Household Goods and Services~~ pursuant to Chapter ~~7 3.1~~ (commencing with Section ~~5404~~ *19225*) of Division ~~2 8~~ of the ~~Public Utilities-Business and Professions~~ Code subcontracting with, or otherwise engaging, another permitted household ~~goods-carrier-mover~~ to provide transportation of household goods using its own employees and motor vehicles, as defined in ~~former~~ Section 5108 of the Public Utilities Code.

(5) A client employer that is a cable ~~operator~~ *operator*, as defined by Section 5830 of the Public Utilities Code, a direct-to-home satellite service provider, or a telephone ~~corporation~~ *corporation*, as defined by Section 234 of the Public Utilities Code, based upon its contracting with a company to build, install, maintain, or perform repair work utilizing the employees and vehicles of the contractor if the name of the contractor is visible on employee uniforms and vehicles.

(6) A motor club holding a certificate of authority issued pursuant to Chapter 2 (commencing with Section 12160) of Part 5 of Division 2 of the Insurance Code when it contracts with third parties to provide motor club services utilizing the employees and vehicles of the third-party contractor if the name of the contractor is visible on the contractor's vehicles.

SEC. 2. Section 2036 of the Streets and Highways Code is amended to read:

2036. (a) Cities and counties shall maintain their existing commitment of local funds for street, road, and highway purposes in order to remain eligible for an allocation or apportionment of funds pursuant to Section 2032.

(b) In order to receive an allocation or apportionment pursuant to Section 2032, the city or county shall annually expend from its general fund for street, road, and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 2009–10, 2010–11, and 2011–12 fiscal years, as reported to the Controller pursuant to Section 2151. For purposes of this subdivision, in calculating a city's or county's annual general fund expenditures

and its average general fund expenditures for the 2009–10, 2010–11, and 2011–12 fiscal years, any unrestricted funds that the city or county may expend at its discretion, including vehicle in-lieu tax revenues and revenues from fines and forfeitures, expended for street, road, and highway purposes shall be considered expenditures from the general fund. One-time allocations that have been expended for street and highway purposes, but which may not be available on an ongoing basis, including revenue provided under the Teeter Plan Bond Law of 1994 (Chapter 6.6 (commencing with Section 54773) of Part 1 of Division 2 of Title 5 of the Government Code), may not be considered when calculating a city's or county's annual general fund expenditures.

(c) For any city incorporated after July 1, 2009, the Controller shall calculate an annual average expenditure for the period between July 1, 2009, and December 31, 2015, inclusive, that the city was incorporated.

(d) For purposes of subdivision (b), the Controller may request fiscal data from cities and counties in addition to data provided pursuant to Section 2151, for the 2009–10, 2010–11, and 2011–12 fiscal years. Each city and county shall furnish the data to the Controller not later than 120 days after receiving the request. The Controller may withhold payment to cities and counties that do not comply with the request for information or that provide incomplete data.

(e) The Controller may perform audits to ensure compliance with subdivision (b) when deemed necessary.

(1) For any city or county that has not complied with subdivision (b), the Controller shall withhold from its apportionment pursuant to Section 2032 for a fiscal year following an audit an amount up to the amount of funds that the city or county received during the fiscal year that was audited. The amount withheld shall be reapportioned in one annual payment pursuant to paragraph (3).

(2) If the amount to be apportioned pursuant to Section 2032 is less than the amount to be withheld pursuant to paragraph (1), the city or county shall reimburse the state for the difference between the amount withheld and the apportionment that was received during the fiscal year that was audited. If the city or county is ineligible for an apportionment pursuant to Section 2032, the city or county shall reimburse the state in an amount equal to the allocation or apportionment it received in the fiscal year that was audited.

~~*(e) (3) The Controller may perform audits to ensure compliance with subdivision (b) when deemed necessary. Any city or county that has not complied with subdivision (b) shall reimburse the state for the funds it received during that fiscal year. Any funds withheld or returned as a result of a failure to comply with subdivision (b) shall be reallocated or reapportioned to the other counties and or cities whose expenditures are in compliance. compliance during the fiscal year that the funds are withheld or returned. The reallocation or reapportionment shall be pursuant to the formula in clauses (i) and (ii) of subparagraph (C) of paragraph (3) of subdivision (a) of Section 2103.*~~

(4) The Controller may adopt any rules, regulations, and procedures necessary to carry out the purposes of this section.

(f) If a city or county fails to comply with the requirements of subdivision (b) in a particular fiscal year, the city or county may expend during that fiscal year and the following fiscal year a total amount that is not less than the total amount required to be expended for those fiscal years for purposes of complying with subdivision (b).

SEC. 3. Section 2113 of the Streets and Highways Code is amended to read:

2113. ~~*(a) An*~~ apportionment of money from the Highway Users Tax ~~Fund as provided in Section 2106 or 2107 shall~~ *Account shall not* be made to a city unless the city has set ~~up up~~, by ~~ordinance~~ *ordinance*, a ~~“special special gas tax street improvement fund.”~~ *fund*.

~~*(b) All apportionments of such moneys amounts paid to each city out of the Highway Users Tax Account shall be deposited in the “special its special gas tax street improvement fund.” fund.*~~

~~*(c) In making any expenditure expenditure, a city shall follow the law governing it in regard to the doing of the particular type of work in cases which that are not exclusively municipal affairs.*~~

~~No~~ (d) A state officer or employee shall *not* be liable for anything done, or omitted to be done, by ~~any a~~ city in the performance of any work.

(e) Interest received by a city from the investment of money in its special gas tax street ~~improvement~~ fund shall be deposited in the fund and shall be used for street purposes.

SEC. 4. Section 36627 of the Streets and Highways Code is amended to read:

36627. Following adoption of the resolution establishing district assessments on properties pursuant to Section ~~36625 or Section 36626, 36625~~, the clerk shall record a notice and an assessment diagram pursuant to Section 3114. No other provision of Division 4.5 (commencing with Section 3100) applies to an assessment district created pursuant to this part.

SEC. 5. Section 36633 of the Streets and Highways Code is amended to read:

36633. The validity of an assessment levied under this part shall not be contested in ~~any an~~ action or proceeding unless the action or proceeding is commenced within 30 days after the resolution levying the assessment is adopted pursuant to Section 36626. ~~Any An~~ appeal from a final judgment in an action or proceeding shall be perfected within 30 days after the entry of judgment.

SEC. 6. Section 16020.1 of the Vehicle Code is repealed.

~~16020.1. (a) On and after January 1, 2020, Section 4000.37 does not apply to vehicle owners with a residence address in the County of Los Angeles at the time of registration renewal.~~

~~(b) On and after January 1, 2020, subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the County of Los Angeles.~~

SEC. 7. Section 16020.2 of the Vehicle Code is repealed.

~~16020.2. (a) On and after January 1, 2020, Section 4000.37 does not apply to vehicle owners with a residence address in the City and County of San Francisco at the time of registration renewal.~~

~~(b) On and after January 1, 2020, subdivisions (a) and (b) of Section 16028 do not apply to a person who drives a motor vehicle upon a highway in the City and County of San Francisco.~~

SEC. 8. Section 27150.2 of the Vehicle Code is amended to read:

27150.2. (a) Stations providing referee functions pursuant to Section 44036 of the Health and Safety Code shall provide for the testing of vehicular exhaust systems and the issuance of certificates of compliance only for those vehicles that have received a citation for a violation of Section 27150 or 27151.

(b) A certificate of compliance for a vehicular exhaust system shall be issued pursuant to subdivision (a) if the vehicle complies with Sections 27150 and 27151. Exhaust systems installed on motor vehicles, other than motorcycles, with a manufacturer's gross vehicle weight rating of less than 6,000 pounds comply with Sections 27150 and 27151 if they emit no more than 95 dbA when tested in accordance with Society of Automotive Engineers Standard J1492 ~~Oct~~ *October* 2008.

(c) An exhaust system certificate of compliance issued pursuant to subdivision (a) shall identify, to the extent possible, the make, model, year, license number, and vehicle identification number of the vehicle tested, and the make and model of the exhaust system installed on the vehicle.

(d) The station shall charge a fee for the exhaust system certificate of compliance issued pursuant to subdivision (a). The fee charged shall be calculated to recover the costs incurred by the Department of Consumer Affairs to implement this section. The fees charged by the station shall

be deposited in the Vehicle Inspection and Repair Fund established by Section 44062 of the Health and Safety Code.

(e) Vehicular exhaust systems are exempt from the requirements of Sections 27150 and 27151 if compliance with those sections, or the regulations adopted pursuant thereto, would cause an unreasonable hardship without resulting in a sufficient corresponding benefit with respect to noise level control.

SEC. 9. Section 27151 of the Vehicle Code is amended to read:

27151. (a) A person shall not modify the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the motor of the vehicle so that the vehicle is not in compliance with the provisions of Section 27150 or exceeds the noise limits established for the type of vehicle in Article 2.5 (commencing with Section 27200). A person shall not operate a motor vehicle with an exhaust system so modified.

(b) For the purposes of exhaust systems installed on motor vehicles with a manufacturer's gross vehicle weight rating of less than 6,000 pounds, other than motorcycles, a sound level of 95 dbA or less, when tested in accordance with Society of Automotive Engineers Standard J1492 ~~Oct~~ *October* 2008, complies with this section. Motor vehicle exhaust systems or parts thereof include, but are not limited to, nonoriginal exhaust equipment.

SEC. 10. Section 34500 of the Vehicle Code is amended to read:

34500. The department shall regulate the safe operation of the following vehicles:

(a) Motortrucks of three or more axles that are more than 10,000 pounds gross vehicle weight rating.

(b) Truck tractors.

(c) Buses, schoolbuses, school pupil activity buses, youth buses, farm labor vehicles, modified limousines, and general public paratransit vehicles.

(d) Trailers and semitrailers designed or used for the transportation of more than 10 persons, and the towing motor vehicle.

(e) Trailers and semitrailers, pole or pipe dollies, auxiliary dollies, and logging dollies used in combination with vehicles listed in subdivision (a), (b), (c), (d), or (j). This subdivision does not include camp trailers, trailer coaches, and utility trailers.

(f) A combination of a motortruck and a vehicle or vehicles set forth in subdivision (e) that exceeds 40 feet in length when coupled together.

(g) A vehicle, or a combination of vehicles, transporting hazardous materials.

(h) Manufactured homes that, when moved upon the highway, are required to be moved pursuant to a ~~permit~~ *permit*, as specified in Section 35780 or 35790.

(i) A park trailer, as described in Section 18009.3 of the Health and Safety Code, that, when moved upon a highway, is required to be moved pursuant to a permit pursuant to Section 35780.

(j) Any other motortruck not specified in subdivisions (a) to (h), inclusive, or subdivision (k), that is regulated by the Department of Motor Vehicles, ~~the Public Utilities Commission,~~ *Department of Consumer Affairs*, or the United States Secretary of Transportation.

(k) A commercial motor vehicle with a gross vehicle weight rating of 26,001 or more pounds or a commercial motor vehicle of any gross vehicle weight rating towing a vehicle described in subdivision (e) with a gross vehicle weight rating of more than 10,000 pounds, except combinations including camp trailers, trailer coaches, or utility trailers. For purposes of this subdivision, the term "commercial motor vehicle" has the *same* meaning *as* defined in subdivision (b) of Section 15210.

Agenda Item 4e: SB 391

Senate Bill No. 391

CHAPTER 210

An act to amend Section 19283.1 of the Business and Professions Code, relating to business.

[Approved by Governor August 30, 2019. Filed with Secretary of State August 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 391, Monning. Household Movers Act: enforcement: special investigators and supervising special investigators.

Existing law, the Household Movers Act, provides for the regulation of household movers by the Bureau of Household Goods and Services in the Department of Consumer Affairs. The act authorizes a peace officer to enforce or assist in the enforcement of certain provisions of the act that are subject to criminal penalties.

This bill would also authorize a person employed as a special investigator or supervising special investigator by the bureau and designated by the Director of Consumer Affairs to issue a written notice to appear in court for those violations for which a peace officer may enforce or assist in the enforcement, in accordance with specified procedures.

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

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

SECTION 1. Section 19283.1 of the Business and Professions Code is amended to read:

19283.1. (a) The bureau shall ensure that this chapter is enforced and obeyed, and that violations thereof are promptly prosecuted and that moneys due to the state are recovered and collected.

(b) For purposes of this section, "peace officer" means a person designated as a peace officer pursuant to Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(c) A peace officer may enforce and assist in the enforcement of Sections 19277 and 19278, resulting from a violation of Section 19236, 19237, 19244, or 19276, or more than one of those sections. A peace officer may additionally enforce and assist in the enforcement of Sections 19277.1 and 19279.3. In any case in which an arrest authorized by this subdivision is made for an offense declared to be a misdemeanor, and the person arrested does not demand to be taken before a magistrate, the arresting peace officer may, instead of taking the person before a magistrate, follow the procedure prescribed by Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code. The provisions of that chapter shall thereafter apply with reference to any proceeding based upon the issuance of a citation pursuant to this authority.

(d) The bureau shall coordinate enforcement of this section with those peace officers likely to be involved in enforcing this section, including undertaking both of the following:

(1) Educational outreach to promote awareness among those peace officers about the requirements of Sections 19236, 19237, 19244, 19276, 19277, 19277.1, 19278, and 19279.3.

(2) Establishing lines of communication so that the bureau is notified if an action is commenced to enforce the requirements of those sections specified in subdivision (c), so that the bureau may take appropriate action to enforce the citation and fine provisions of this article.

(e) The Attorney General, a district attorney of the proper county or city and county, or a city attorney may institute and prosecute actions or proceedings for the violation of any law committed in connection with, or arising from, a transaction involving the transportation of household goods and personal effects.

(f) Notwithstanding any other law, a person employed as a special investigator or supervising special investigator by the bureau and designated by the director shall have the authority to issue a written notice to appear in court pursuant to Chapter 5C (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code for a violation of a provision for which a peace officer may enforce or assist in the enforcement pursuant to subdivision (c). An employee so designated is not a peace officer, is not entitled to safety member retirement benefits as a result of the designation, and does not have the power of arrest.

Agenda Item 4f: S. 3551

115TH CONGRESS
2^D SESSION

S. 3551

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 4, 2018

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safer Occupancy Fur-
5 niture Flammability Act” or “SOFFA”.

6 **SEC. 2. ADOPTION OF CALIFORNIA FLAMMABILITY STAND-**
7 **ARD AS A FEDERAL STANDARD.**

8 (a) **DEFINITIONS.**—In this section—

1 (1) the term “bedding product” means—

2 (A) an item that is used for sleeping or
3 sleep-related purposes; or

4 (B) any component or accessory with re-
5 spect to an item described in subparagraph (A),
6 without regard to whether the component or ac-
7 cessory, as applicable, is used—

8 (i) alone; or

9 (ii) along with, or contained within,
10 that item;

11 (2) the term “California standard” means the
12 standard set forth by the Bureau of Electronic and
13 Appliance Repair, Home Furnishings and Thermal
14 Insulation of the Department of Consumer Affairs of
15 the State of California in Technical Bulletin 117–
16 2013, entitled “Requirements, Test Procedure and
17 Apparatus for Testing the Smolder Resistance of
18 Materials Used in Upholstered Furniture”, originally
19 published June 2013, as in effect on the date of en-
20 actment of this Act;

21 (3) the terms “foundation” and “mattress”
22 have the meanings given those terms in section
23 1633.2 of title 16, Code of Federal Regulations, as
24 in effect on the date of enactment of this Act; and

25 (4) the term “upholstered furniture”—

1 (A) means an article of seating furniture
2 that—

3 (i) is intended for indoor use;
4 (ii) is movable or stationary;
5 (iii) is constructed with a contiguous
6 upholstered—

7 (I) seat; and

8 (II)(aa) back; or

9 (bb) arm;

10 (iv) is—

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

16 (II) stuffed or filled, or able to be
17 stuffed or filled, in whole or in part,
18 with any material, including a sub-
19 stance or material that is hidden or
20 concealed by fabric or another cov-
21 ering, including a cushion or pillow
22 belonging to, or forming a part of, the
23 article of furniture; and

24 (v) together with the structural units
25 of the article of furniture, any filling mate-

1 rial, and the container and covering with
 2 respect to those structural units and that
 3 filling material, can be used as a support
 4 for the body of an individual, or the limbs
 5 and feet of an individual, when the indi-
 6 vidual sits in an upright or reclining posi-
 7 tion;

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

10 (C) does not include—

11 (i) a mattress;

12 (ii) a foundation;

13 (iii) any bedding product; or

14 (iv) furniture that is used exclusively
 15 for the purpose of physical fitness and ex-
 16 ercise.

17 (b) ADOPTION OF STANDARD.—

18 (1) IN GENERAL.—Beginning on the date that
 19 is 180 days after the date of enactment of this Act,
 20 and except as provided in paragraph (2), the Cali-
 21 fornia standard shall be considered to be a flamma-
 22 bility standard promulgated by the Consumer Prod-
 23 uct Safety Commission under section 4 of the Flam-
 24 mable Fabrics Act (15 U.S.C. 1193).

1 (2) TESTING AND CERTIFICATION.—A fabric,
2 related material, or product to which the California
3 standard applies as a result of paragraph (1) shall
4 not be subject to section 14(a) of the Consumer
5 Product Safety Act (15 U.S.C. 2063(a)).

6 (c) PREEMPTION.—

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

19 (2) PRESERVATION OF CERTAIN STATE LAW.—

20 Nothing in this Act or the Flammable Fabrics Act
21 (15 U.S.C. 1191 et seq.) may be construed to pre-
22 empt or otherwise affect—

23 (A) any State or local law, regulation,
24 code, standard, or requirement that—

1 (i) concerns health risks associated
2 with upholstered furniture; and

3 (ii) is not designed to protect against
4 the risk of occurrence of fire, or to slow or
5 prevent the spread of fire, with respect to
6 upholstered furniture;

7 (B) sections 1374 through 1374.3 of title
8 4, California Code of Regulations (except for
9 subsections (b) and (c) of section 1374 of that
10 title), as in effect on the date of enactment of
11 this Act; or

12 (C) the California standard.

Æ

Agenda Item 6a: SB 1483

Legislative and Regulatory Implementation Deadline

The **Bureau of Household Goods and Services** is providing a reminder that specific requirements resulting from the following bills, originally enacted January 1, 2019, will become enforceable beginning **January 1, 2020**. The summaries below are intended to assist licensees in meeting specific implementation deadlines, but they are not comprehensive. Please refer to each bill for a complete picture of its impact to your industry.

[AB 2998 \(Bloom, Chapter 924, Statutes of 2018\)](#)

The sale and distribution of juvenile products, upholstered furniture, foam used in mattresses, as well as the use of new components of reupholstered furniture (collectively referred to as covered products) that contain specified flame-retardant chemicals at levels above 1,000 parts per million will be prohibited, **effective January 1, 2020**. As this bill implements a new flame-retardant chemical content standard, there are many impacts to the Bureau and licensees, several of which are highlighted. Each corresponding new section of the Business and Professions Code is in parenthesis. If you have questions that are not answered here, the Bureau published a [Frequently Asked Questions](#), which will be updated in October.

CUSTOM UPHOLSTERERS

- Custom upholsterers will be prohibited from using replacement components that contain flame-retardant chemicals at levels above 1,000 parts per million (BPC §19101(b)).

MANUFACTURERS

- Manufacturers that sell or distribute a covered product in violation of the flame-retardant chemical restriction will be subject to fines of \$1,000-\$10,000 (BPC §19103(b)(2)(A)); and
- Producers of new mattresses registered with the Bureau as of January 1, 2019, and thereafter, will be required to respond to surveys required by this bill to be conducted by the International Sleep Products Association (BPC §19104(b)).

INTERNATIONAL SLEEP PRODUCTS ASSOCIATION (ISPA) REQUIREMENTS

- ISPA will be required to conduct a survey of all mattress producers to report materials and methods used to meet flammability standards (BPC §19104(a)); and
- ISPA will be required to submit results of the survey, including a list of mattress producers that fail to respond, to the Bureau no later than January 31, 2020, and every three years thereafter (BPC §19104(a)).

BUREAU OF HOUSEHOLD GOODS AND SERVICES

- The Bureau will be required to extend testing required by [SB 1019 \(Leno, Chapter 862, Statutes of 2014\)](#) to covered products to determine the presence of flame retardant chemicals in excess of 1,000 parts per million (BPC §19103(b)(1));

- The Bureau will be authorized to assess a fine of \$1,000-\$10,000 to any manufacturer that sells or distributes a covered product that testing shows is in violation of the flame-retardant chemical restriction (BPC §§19103(b)(2)(A) and 19103(c));
- The Bureau will be required to post a list of covered products that testing shows are in violation of the flame-retardant chemical content limit (BPC §19103(b)(2)(B));
- The Bureau will be authorized to assess a fine of \$1,000-\$10,000 to any person for continued sale or distribution of covered products in the same stock keeping unit as products identified as in violation of the flame-retardant chemical content limit by the Bureau on its website (BPC §§19103(b)(2)(B) and 19103(c)).
- The Bureau will be required to receive complaints regarding possible violations of covered products regulated by this bill (BPC §19103(f)); and
- The Bureau will be required to post the ISPA survey reports, including the list of non-respondents, on its website (BPC §19104(c)).

SB 1483 (Hill, Chapter 578, Statutes of 2018)

This bill makes amendments to the definitions of “service contract” and “consumer goods” that may require some who may not have previously fallen under the Bureau’s jurisdiction to register as service contractors. This bill also changed the name of the Bureau from the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation to the Bureau of Household Goods and Services effective January 1, 2019. This amendment requires updates to documents used by each of the Bureau’s regulated industries.

SERVICE CONTRACTOR REQUIREMENTS

The definitions for “service contract” and “consumer goods” will be amended and the Bureau’s jurisdiction will be extended more generally to all consumer goods used for personal, family, or household purposes, as follows:

“Service contract” as defined under Business and Professions Code §9855, subdivision (a), will mean a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, replacement, or repair of consumer goods and may include provisions for incidental payment of indemnity under limited circumstances, including, but not limited to, power surges, food spoilage, or accidental damage from handling. “Service contract” shall not include a contract in writing to maintain structural wiring associated with the delivery of cable, telephone, or other broadband communications services. “Service contract” shall not include a contract in which a consumer agrees to pay a provider of vision care services for a discount on optical products or contact lenses for a specified duration.

“Consumer goods” as defined under Business and Professions Code §9855, subdivision (j), will mean any new or used product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, including assistive devices.

The amendments will require those who offer service contracts for consumer goods, as defined, to register with the Bureau as a Service Contractor and submit all consumer goods service contracts to the Bureau for approval prior to offering the contract for sale to the public.

NAME CHANGE AFFECTING BUREAU INDUSTRIES

As a reminder, all documents on which the Bureau's name is referenced must be updated to reflect the new name, as follows:

ELECTRONIC AND APPLIANCE REPAIR SERVICE DEALER INDUSTRY

The statement shown on receipts and invoices, as required by California Code of Regulations §§[2721](#), subsection (g), and [2723](#), must be updated to reflect the Bureau's new name, as follows:

"An estimate as required (Section 9844 of the California Business and Professions Code) for repairs shall be given to the customer by the service dealer in writing, and the service dealer may not charge for work done or parts supplied in excess of the estimate without prior consent of the customer. Where provided in writing, the service dealer may charge a reasonable fee for services provided in determining the nature of the malfunction in preparation of a written estimate for repair. For information contact the Bureau of Household Goods and Services, Department of Consumer Affairs, Sacramento 95834."

HOME FURNISHINGS MANUFACTURER INDUSTRY

The certification statement shown on the law label, as required by California Code of Regulations §[1126](#), subsection (f) Type No. 8, must be updated to reflect the Bureau's new name, as follows:

"Certification is made by the manufacturer that the materials in this article are described in accordance with law. This product meets the requirements of Bureau of Household Goods and Services Technical Bulletin Number 117-2013."

The certification statement shown on the flammability label, as required by California Code of Regulations §[1374.3](#), subsections (a) and (b), must be updated to reflect the Bureau's new name, as follows:

California Code of Regulations §1374.3, subsection (a):

NOTICE

"THIS ARTICLE MEETS ALL FLAMMABILITY REQUIREMENTS OF CALIFORNIA BUREAU OF HOUSEHOLD GOODS AND SERVICES TECHNICAL BULLETINS 116 AND 117-2013. CARE SHOULD BE EXERCISED NEAR OPEN FLAME OR WITH BURNING CIGARETTES."

California Code of Regulations §1374.3, subsection (b):

NOTICE

"THIS ARTICLE MEETS THE FLAMMABILITY REQUIREMENTS OF CALIFORNIA BUREAU OF HOUSEHOLD GOODS AND SERVICES TECHNICAL BULLETIN 117-2013. CARE SHOULD BE EXERCISED NEAR OPEN FLAME OR WITH BURNING CIGARETTES."

HOUSEHOLD MOVERS INDUSTRY

The notice provided to consignors, as required by Business and Professions Code §19246, subdivision (f), must be updated to reflect the new name, as follows:

“IMPORTANT NOTICE ABOUT YOUR MOVE
“IT IS VERY IMPORTANT THAT YOU ONLY AGREE TO A “NOT TO EXCEED”
AMOUNT THAT YOU THINK IS A PROPER AND REASONABLE FEE FOR THE
SERVICES YOU ARE REQUESTING. THE “NOT TO EXCEED” AMOUNT THIS MOVER
IS REQUESTING IS \$ _____ TO PERFORM THE FOLLOWING
SERVICES:

_____.

“IF YOU DO NOT AGREE TO THE “NOT TO EXCEED” AMOUNT LISTED OR THE
DESCRIPTION OF SERVICES, YOU HAVE THE RIGHT TO REFUSE THE MOVER’S
SERVICE AT NO CHARGE TO YOU.

“If you request additional or different services at the time of the move, you may be asked
to complete a Change Order which will set forth your agreement to pay for additional fees
for those newly requested services. If you agree to the additional charges on that Change
Order, those charges may be added to the “NOT TO EXCEED” amount set forth above. If
you do not agree to the amounts listed in the Change Order, you should not sign it and
may refuse the mover’s services.

“A mover cannot refuse to release your goods once you have paid the “NOT TO EXCEED”
amount for the transportation of your goods and personal effects and any additional
services that you have agreed to in writing. The “NOT TO EXCEED” amount must be
reasonable.

“A mover cannot, under any circumstances, withhold food, medicine, medical devices,
items to treat or assist a disabled person, or items used for care of a minor child. A mover
without a valid permit has no right to withhold your goods for any reason, including claims
that you have not adequately paid for services rendered.

“For additional information or to confirm whether a mover has a valid permit issued by the
Division of Household Movers of the Bureau of Household Goods and Services, please
call the Bureau toll free at: _____ Insert toll-free number_____.

“I have completed this form and provided the consumer (shipper) with a copy of this notice.

“Signed _____ Dated _____

“I have been provided with a copy of this form.

“Signed _____ Dated _____”

Agenda Item 6b: AB 2998

FREQUENTLY ASKED QUESTIONS (FAQs)

Assembly Bill 2998 (Bloom) – Consumer Products: Flame Retardant Materials

**BUREAU OF HOUSEHOLD GOODS AND SERVICES
Department of Consumer Affairs
State of California**

Updated: October 2019

For more information about the information in this document, please contact the Bureau of Household Goods and Services, 4244 South Market Court, Suite D, Sacramento, CA 95834; telephone: (916) 999-2041; or visit our website: www.bhgs.dca.ca.gov.

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IMPLEMENTATION

1. Q: When will AB 2998 be implemented?

A: All provisions of AB 2998 (Bloom, Chapter 924, Statutes of 2018) are effective on January 1, 2020. Accordingly, the Bureau of Household Goods and Services (Bureau) will begin pulling product for testing and enforcement on that date.

2. Q: What does AB 2998 require?

A: AB 2998 prohibits the sale and distribution of juvenile products, upholstered furniture, replacement components of reupholstered furniture, and the foam in mattresses (collectively referred to as “covered products”) that contain covered flame-retardant (FR) chemicals at levels above 1,000 parts per million (ppm) in California on and after January 1, 2020.

This bill requires the Bureau to extend the testing required by SB 1019 (Leno, Chapter 862, Statutes of 2014) for upholstered furniture to covered products. Testing will be to determine if there are FR chemicals at levels above 1,000 ppm. The Bureau is required to post a list identifying covered products that are found to be in violation of AB 2998 on its website.

This bill authorizes the Bureau to issue a fine to any manufacturer, importer, wholesaler, or retailer that continues to sell or distribute a covered product that the Bureau identifies as in violation of AB 2998 on its website.

This bill requires the International Sleep Products Association (ISPA) to conduct a survey of all mattress producers to report materials and methods used to meet flammability standards. The ISPA must submit survey results to the Bureau no later than January 31, 2020, and every three years thereafter, including a list of mattress producers that fail to respond.

3. Q: Is AB 2998 applicable to products manufactured before January 1, 2020?

A: Yes. On and after January 1, 2020, covered products are prohibited from being sold or distributed in California if they contain FR chemicals at levels above 1,000 ppm, irrespective of the manufacture date. This bill was signed in September 2018 and is not effective until January 1, 2020. The delayed implementation date was enacted to give industry time to liquidate non-compliant inventory or designate it for sale outside of California.

4. Q: Who is responsible for compliance with AB 2998?

A: It is the responsibility of all who sell or distribute covered products to ensure those products do not contain FR chemicals at levels above 1,000 ppm. For the purposes of enforcement, responsibility may lie with the manufacturer, importer, wholesaler, retailer, or *all* parties in the chain of distribution.¹

¹ Business and Professions Code (BPC) [§ 19072](#).

5. Q: Will the prohibition from sale or distribution of products containing flame-retardant chemicals above 1,000 ppm be applicable in any other states?

A: The Bureau has no jurisdictional authority in other states and to date, we are not aware of adoption of this prohibition elsewhere. To ensure compliance, contact the appropriate authorities in other states to find out their requirements, if any.

6. Q: Does enactment of AB 2998 mean SB 1019 is no longer applicable?

A: AB 2998 did not amend or repeal SB 1019. Thus, all labeling, documentation, testing, and other requirements of SB 1019 remain valid and enforceable.

7. Q: What is the difference between AB 2998 and SB 1019?

A: SB 1019 requires a label to indicate whether FR chemicals were added to the product. To determine the point at which FR chemicals were added, documentation requirements were enacted under SB 1019.

AB 2998 prohibits the sale and distribution of products containing FR chemicals at levels greater than 1,000 ppm. Because the violation of AB 2998 resides in the sale or distribution, additional labeling and documentation is not required.

8. Q: If a non-compliant covered product is sold before January 1, 2020, can it be delivered after that date?

A. Distribution of a Bureau-identified non-compliant product is prohibited effective January 1, 2020, so delivery must be made by December 31, 2019.² BPC [§ 19103\(b\)\(2\)\(B\)](#) states a person may be subject to fines, “If a person continues to sell *or distribute* products in commerce in this state belonging to the same stock keeping unit (SKU) as products that do not comply with § 19101, after notice of the violation is posted on the bureau’s Internet Web site, the bureau may assess fines against the person for the continued sale *or distribution* of those products...” [emphasis added].

9. Q. If a covered product is financed, is it considered sold when the customer takes possession of it, when an initial payment is made, or when a final payment is made?

A. None of the above. Section [1802.19\(a\)](#) of the California Civil Code essentially states once an installment agreement is reached between buyer and seller, a product is legally considered sold regardless of whether the contract is paid off. Therefore, an item would be considered sold if the buyer and seller agree before AB 2998 takes effect. However, the item must also be delivered before January 1, 2020, as stated in question eight.

² BPC [§ 19101\(a\)](#).

GENERAL APPLICABILITY AND SCOPE

10.Q: What does “upholstered furniture” mean for the purposes of AB 2998?

A: “Upholstered furniture” subject to the provisions of AB 2998 includes any flexible polyurethane foam or upholstered or reupholstered furniture sold in California that is required to meet the test requirements set forth in Technical Bulletin (TB) 117-2013, entitled *Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture*.³

11.Q: Does AB 2998 include an exemption for products subject to TB 133?

A: TB 133 was [repealed](#) on January 22, 2019, which renders any exemption for products subject to TB 133 ineffectual.

12.Q: Does AB 2998 apply to residential furniture only?

A: No. TB 133, the flammability standard for upholstered furniture in public occupancies, was repealed effective January 22, 2019. All upholstered and reupholstered furniture must now meet [TB 117-2013](#). Because this bill applies to products required to meet TB 117-2013, upholstered and reupholstered furniture intended for use in public occupancies is also subject to AB 2998.

13.Q: Does AB 2998 apply to outdoor upholstered furniture?

A: Cushions and pads intended solely for outdoor use are exempt from meeting the requirements of TB 117-2013.⁴ Consequently, AB 2998 also does not apply.

14.Q: Does AB 2998 apply to customer owned materials?

A: Yes. All replacement materials listed in BPC [§ 19094\(a\)\(1\)](#) that are used by a custom upholsterer to repair, reupholster, recover, restore, or renew upholstered or reupholstered furniture must meet the AB 2998 flame-retardant chemical content standard.⁵ For manufacturers, AB 2998 applies to all components of covered products, regardless of who supplies the material.

15.Q: Does AB 2998 apply to mattresses?

A: Yes, AB 2998 applies to the foam in mattresses and all components of toddler mattresses, crib mattresses, and all other infant sleep products. Specific exemptions are provided for electronic components, the associated casings of electronic components, and the thread or fiber used for stitching together mattresses.⁶

³ BPC [§ 19100\(h\)](#) and [§ 19094\(a\)\(2\)](#).

⁴ California Code of Regulations (CCR), Title 4, Division 3, [§ 1374.2\(a\)](#).

⁵ BPC [§ 19101\(b\)](#). and [§ 19094\(a\)\(1\)](#).

⁶ BPC [§ 19101\(c\)\(1\)](#) and [§ 19101\(c\)\(3\)](#).

16.Q: Does AB 2998 apply to box springs?

A: No. While box springs are not specifically exempted, AB 2998 uses the federal definition of “mattresses” to determine the scope of the Bureau’s enforcement. That definition, found in [16 CFR § 1632.1](#), specifically excludes mattress foundations.⁷ Consequently, the term “mattress” as applied to AB 2998 also excludes mattress foundations. Further, box springs do not qualify as upholstered furniture, reupholstered furniture, or juvenile products for the purposes of enforcing AB 2998. Therefore, box springs and mattress foundations are not considered “covered products”.

17.Q: Does AB 2998 apply to juvenile bedding?

A: Yes, AB 2998 applies to juvenile bedding, including pillows, comforters, etc., as well as any other juvenile product that is within the Bureau’s jurisdiction, such as toddler mattresses and crib mattresses.

18.Q: If filling material is constructed of many components, which layer must comply with AB 2998?

A: All inside resilient filling materials must comply with AB 2998. The flame-retardant chemical contents restriction applies to all products subject to TB 117-2013, which includes all filling materials and cover fabrics.⁸

19.Q: Which materials in juvenile products, upholstered furniture, reupholstered furniture, and mattresses are subject to AB 2998?

A: Juvenile Products: All components of juvenile products are subject to AB 2998, unless exempted. Exemptions are provided for electronic components of juvenile products and their associated casings per BPC [§ 19101\(c\)\(1\)](#).

Upholstered Furniture: Components of upholstered furniture, defined by BPC [§ 19094\(a\)\(1\)](#) as “separate constituent parts of upholstered furniture sold in California, as identified in TB 117-2013, specifically cover fabrics, barrier materials, resilient filling materials, and decking materials” are subject to requirements of AB 2998. Components not named by § 19094 are exempt from AB 2998 per BPC [§ 19101\(c\)\(2\)](#).

Reupholstered Furniture: Replacement components are subject to AB 2998. Replacement components not named in the BPC [§ 19094\(a\)\(1\)](#) definition of “component” are exempt per BPC [§ 19101\(c\)\(2\)](#).

Mattresses: Only the foam in adult mattresses is subject to AB 2998. All components of toddler mattresses, crib mattresses, and infant sleep products are also subject to AB 2998.

⁷ BPC [§ 19100\(f\)](#).

⁸ CCR, Title 4, Division 3, [§ 1374\(a\)](#).

JUVENILE PRODUCTS

20.Q: What does “juvenile product” mean for the purposes of AB 2998?

A: “Juvenile product” is defined by BPC [§ 19100\(d\)](#) as “a product *subject to this chapter* and designed for residential use by infants and children under 12 years of age, including, but not limited to, a bassinet, booster seat, changing pad, floor playmat, highchair, highchair pad, infant bouncer, infant carrier, infant seat, infant swing, infant walker, nursing pad, nursing pillow, playpen side pad, playard, portable hook-on chair, stroller, and children’s nap mat [emphasis added].” Bedding products, comforters, pillows, and upholstered furniture are examples of products that are “subject to this chapter”, that may be subject to AB 2998 when manufactured for use by children under 12 years of age.⁹

21.Q: Which “juvenile products” are not covered under AB 2998?

A: Per BPC [§ 19100\(e\)](#), “juvenile products” not covered by AB 2998 are:

- (1) Products that are not primarily intended for use in the home, such as products or components for motor vehicles, watercraft, aircraft, or other vehicles.
- (2) Products subject to [Part 571](#) of Title 49 of the Code of Federal Regulations regarding parts and products used in vehicles and aircraft.
- (3) Products required to meet state flammability standards in Technical Bulletin 133, entitled “Flammability Test Procedure for Seating Furniture for Use in Public Occupancies.”
- (4) Consumer electronic products that do not fall under the bureau’s jurisdiction for flammability standards.

22.Q: What criteria is used to determine if a product is a juvenile product?

A: Whether a product is considered a juvenile product depends on each product’s attributes and determinations are made on a case by case basis. The Bureau recommends using the federal standard – [16 CFR § 1200.2](#) – which directs the Consumer Product Safety Commission (Commission) to use four factors to determine whether a product is a children’s product, as guidance:

- (i) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.
- (ii) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.
- (iii) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.
- (iv) The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

⁹ This list is intended to provide examples and therefore, is not exhaustive. Please refer to the Act, Bureau regulations, and technical bulletins for more information on products subject to Bureau jurisdiction.

COVERED FLAME RETARDANT CHEMICALS

23.Q: What is a “flame retardant chemical”?

A: A “flame retardant chemical” is any chemical or chemical compound for which a functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire.

24.Q: What flame retardant chemicals are prohibited by AB 2998?

A: AB 2998 does not prohibit the use of any FR chemical. AB prohibits the sale or distribution of covered products that contain covered FR chemicals in amounts greater than 1,000 ppm.

25.Q: Is there a list of covered flame-retardant chemicals?

A: There is not a list of chemicals, but there are criteria that is used to determine whether an FR is classified as a “covered flame retardant chemical” for the purposes of enforcing AB 2998. Those criteria are found in the BPC:

[§ 19100\(c\)\(1\)](#): Covered flame-retardant chemical means any chemical that meets both of the following criteria:

- (A) A functional use for the chemical is to resist or inhibit the spread of fire or as a synergist to chemicals that resist or inhibit the spread of fire, including, but not limited to, any chemical for which the term “flame retardant” appears on the Occupational Safety and Health Administration substance safety data sheet pursuant to [subdivision \(g\) of § 1910.1200 of Title 29](#) of the Code of Federal Regulations as it read on January 1, 2019.
- (B) The chemical is one of the following:
 - (i) A halogenated, organophosphorus, organonitrogen, or nanoscale chemical.
 - (ii) A chemical defined as a “designated chemical” in [§ 105440](#) of the Health and Safety Code.
 - (iii) A chemical listed on the Washington State Department of Ecology’s list of [Chemicals of High Concern to Children](#) in § 173-334-130 of Title 173 of the Washington Administrative Code as of January 1, 2019 and identified as a flame retardant or as a synergist to flame retardants in the rationale for inclusion in the list.”

To summarize, a covered flame retardant chemical would be a chemical or synergist used to resist or inhibit the spread of fire and one of the following: 1) a halogenated, organophosphorus, organonitrogen, or nanoscale chemical, 2) listed as a “designated chemical” in Health and Safety Code § 105440, or 3) listed by Washington State as a Chemical of High Concern to Children.

If a chemical meets criterion A or B, but not both, it is not a covered FR chemical and would not subject those in the chain of distribution to Bureau enforcement under AB 2998.

DOCUMENTATION and LABELING REQUIREMENTS

26. Q: What type of documentation must the manufacturer/supplier provide the Bureau?

A: Because AB 2998 prohibits the sale and distribution (not the manufacture) of covered products containing flame-retardant chemicals at levels above 1,000 ppm, manufacturers and suppliers are not required to establish the point in the production at which flame-retardant chemicals were added. Therefore, there are no additional documentation requirements under AB 2998.¹⁰

27. Q: Does AB 2998 require an additional label for the covered products?

A: There are no additional labeling requirements under AB 2998. However, manufacturers must still follow the specific wording required by BPC [§ 19094](#), which was implemented by SB 1019, on labels for upholstered furniture products required to meet TB 117-2013.

28. Q: Do I have to label my product as containing FR chemicals or treatments?

A: Yes, but not to comply with AB 2998. The labeling requirements of BPC [§ 19094](#), which was added by SB 1019, are still effective. Therefore, if a product contains flame-retardant chemicals that would constitute marking “Yes” on the SB 1019 label, it should still be marked as such; however, because products with FR chemicals at levels above 1,000 ppm are prohibited from sale or distribution in California as of January 1, 2020, there should not be a product with a label marked “Yes” that is for sale.

SUMMARY OF UPDATES TO FAQ – October 2019

Entire Document: Minor edits throughout to standardize format and style.

Table of Contents: Added new questions (8, 9, 14, and 16); made corresponding edits such as question renumbering, page updates, and font adjustment. Added links to allow one-click navigation to the corresponding response in the document.

Implementation: Added questions 8 and 9.

General Applicability and Scope: Added a link to the TB 117-2013 standard for question 12; added questions 14 and 16; expanded the answer to question 18 to give a more complete response; and moved the exemptions for mattresses in question 19 to the footnote.

Juvenile Products: Added a footnote for question 20.

¹⁰ Manufacturers and suppliers still must meet the documentation requirements of BPC [§ 19094](#).

Agenda Item 9a: Household Mover Scope and Licensing Requirements

Moving Household Goods – Who Is Required to Hold A Permit?

The highest priority of the **Bureau of Household Goods and Services (Bureau)** in exercising its licensing, regulatory, and disciplinary functions under the Household Movers Act (Act) is protection of the public. To advance consumer protection, the Bureau can impose significant penalties for operating while unpermitted or contracting with an unpermitted household mover. This advisory provides information regarding who is, and is not, required to obtain a Bureau-issued household mover permit and the penalties for operating without a permit or contracting with an unpermitted mover.

Services of a household mover, regardless of permit status, are required to be provided in accordance with the Act. Specifically, Business and Professions Code (BPC) [§ 19235](#) states:

“A household mover shall not engage in the business of transportation of used household goods and personal effects for compensation by motor vehicle *over any public highway in this state, except in accordance with the provisions of this chapter*, which is enacted under the power of the state to regulate the use of public highways.”¹ [emphasis added].

In addition, BPC [§ 19228](#), subdivision (c), mandates that household movers follow all rules, regulations, general orders, and the [Tariff](#) in effect as of July 1, 2018, and that failure to adhere to these requirements may serve as grounds for the Bureau taking disciplinary action against a household mover.

PENALTIES FOR UNPERMITTED ACTIVITY

BPC [§ 19283.1](#), subdivision (a), requires the Bureau to ensure that the Act is enforced and obeyed, and that violations are promptly prosecuted. Failure to obtain a Bureau-issued permit may result in one or more penalties under the Act, such as:

Criminal / Administrative: A household mover who fails to obtain a permit may be in violation of BPC [§ 19279.1](#), which may result in an administrative fine. Additionally, BPC [§ 19277](#), subdivision (b), states any person operating as a household mover without a permit may be guilty of a misdemeanor, which is punishable by a fine of up to \$10,000, imprisonment in jail for up to one year, or both, for each violation.² For continued operations in violation of the Act, BPC [§ 19281](#) states every violation is a separate and distinct offense and each day’s continuance is a separate and distinct offense.

¹ BPC [§ 19225.5](#), subdivision (m), defines “public highway” as “every public street, road, or highway in this state.”

² Please note, BPC [§ 19283.1](#) authorizes a peace officer to enforce and assist the Bureau in the enforcement of sections 19277 and 19278, resulting from a violation of Section 19236, 19237, 19244, or 19276.

Civil: BPC [§ 19237](#), subdivision (b), prohibits an unpermitted household mover from enforcing any security interest to recover money owed for the transportation of household goods. Further, any person who utilizes the services of an unpermitted household mover may bring civil action to recover all money paid to that mover.

Contracting: Contracting with an unpermitted household mover is a violation of BPC [§ 19278](#), which is a misdemeanor and could subject the contracting party to a fine up to \$1,000, three months in jail, or both. Again, every violation is a separate and distinct offense and each day's continuance is a separate and distinct offense.

BUSINESSES REQUIRED TO OBTAIN A HOUSEHOLD MOVER PERMIT

BPC [§ 19237](#) requires any person or entity who acts as a household mover in California to obtain a Bureau-issued permit and possess an operating authority issued by the Federal Motor Carrier Safety Administration (FMCSA) if transporting household goods from this state to another state or from another state to this state. A "household mover" is defined, in part, by BPC [§ 19225.5](#), subdivision (h), as:

"permitted or unpermitted transportation for compensation or hire as a business by means of a motor vehicle or motor vehicles being used in the transportation of used household goods and personal effects over any public highway in this state..."

The information provided below is specific to several business models that commonly operate within the household mover scope: 1) Restoration Companies, 2) Inter-State Household Movers, 3) Brokers, and 4) Storage Containers (Pods). The Act does not provide for a statutory exemption for these business models. Accordingly, each business model must obtain a Bureau issued household mover permit to perform the services of a household mover in California.

RESTORATION COMPANIES³

Restoration companies clean up damage to a home and property following a catastrophic event, such as a natural disaster or other event that causes significant damage to a home. Restoration companies preserve the home and its contents so that further damage does not occur.

During that process, a restoration company may move consumer's household goods to an alternate location for testing, restoration, and/or storage while the home is restored. This service is known as a move-out or pack-out. If a restoration company transports the household goods for compensation over a highway in California, that restoration company is subject to the statutory requirements of the Act and must be permitted by the Bureau as it is operating as a household mover.

³ Depending on the type of work performed, restoration companies may also be subject to licensure requirements by the Contractors State Licensing Board or the Bureau's Electronic and Appliance Repair Dealer Registration Law.

BROKERS

A broker is defined by BPC [§ 19225.5](#), subdivision (a), as:

“a person engaged by others in the act of arranging, for compensation, the intrastate transportation of used household goods by a motor vehicle over the highways of this state for, or on behalf of, a shipper, a consignor, or a consignee.”

Additionally, BPC § 19225.5, subdivision (h), states a broker shall be considered a household mover. Consequently, a broker must obtain a permit to arrange for the transport of household goods in California. Because brokers are considered household movers, brokers must also comply with all laws applicable to household movers, including the Tariff, which requires a visual inspection prior to issuing an estimate.

A Broker of Household Goods permit from the FMCSA does not qualify as authority to act as a broker for moves that take place within California. While the FMCSA permit allows a broker to arrange for inter-state moves, a California permit is required for any move on a highway *in this state*.

INTER-STATE HOUSEHOLD MOVERS

An inter-state household mover must obtain a Bureau-issued permit to operate within California when transporting household goods in California, as well as an operating authority from the FMCSA to operate from state to state.

BPC [§ 19237](#) prohibits a household mover, including brokers, from engaging, or attempting to engage, in the business of the transportation of used household goods and personal effects by motor vehicle over any public highway in this state, unless *both* of the following are met:

1. For transportation of household goods within this state, there is in force a permit issued by the Bureau authorizing those operations.
2. For transportation of household goods from this state to another state or from another state to this state, there is in force a valid operating authority issued by the FMCSA.

Federal Authority

Title 49 of the United States Code (U.S.C), [§ 14501](#), states federal authority regarding intrastate transportation and prohibits states from enacting or enforcing laws related to a price, route, or service of any motor carrier with respect to the transportation of property. However, subparagraph (c)(2)(B) of § 14501 states the prohibition *does not apply to the transportation of household goods within a state*.

Consequently, to transport household goods in California, inter-state household movers must comply with permit and other requirements of the Act and all other applicable laws related to the transportation of household goods while in California.

STORAGE CONTAINERS, "PODS", OR OTHER STORAGE DELIVERY SERVICES

In California, moving packed storage containers to a storage facility, another house, or any other location is within the scope of a household mover because moving the container involves transporting household goods. Consequently, a household mover permit and compliance with all applicable laws is required to perform this service.

California's requirements may be obscured by the federal definition of household mover in 49 U.S.C. [§ 13102](#), subparagraph (12), which states a household mover is a motor carrier that in the course of transporting household goods, offers the services of binding and non-binding estimates, inventorying, packing and unpacking of items and personal residences, and loading and unloading at personal residences. Additionally, 49 U.S.C. [§ 13102](#), subsection (12)(C), grants a limited service exclusion for motor carriers that transport containers or trailers that are entirely loaded and unloaded by somebody not affiliated with the motor carrier.

Based on the federal codes, many companies that deliver and transport storage containers to be packed by the consumer believe they are exempt from Bureau permit requirements, but that limited service exemption only applies to federal requirements. As stated in the section on inter-state movers, 49 U.S.C. [§ 14501](#), subparagraph (c)(2)(b), allows states to adopt and enforce laws to regulate household movers.

There is a limited exemption in California provided by BPC [§ 21701.1](#) for Self-Service Storage Facilities, which is an exemption from regulation under the Act, not from permit requirements, as described below.

If the owner or operator of a self-service storage facility or household mover transports containers to and from a self-service facility owned or operated by the owner, operator, or household mover, the activity may be exempt from regulation under the Act if the owner, operator, or household mover meets *all* of the following requirements:⁴

1. Does not charge more than \$100 to deliver an empty storage container and transport the loaded container or to deliver a loaded container and pick up the empty container.
2. Does not handle the contents of the container (this also applies to affiliates).
3. Has obtained a Bureau household mover permit or a Department of Motor Vehicle (DMV) registration as a motor carrier of property.
4. Has procured and maintained cargo insurance in the amount of at least \$20,000 per shipment.
5. Provides a disclosure to the customer regarding the container transfer services offered.
6. Provides the customer with a brochure containing specified information regarding loading the container.

⁴ Please refer to BPC [§ 21701.1](#) for a full description of the exemption requirements.

Although meeting all of these statutory criteria exempts the activity from regulation under the Act, the applicable operating authority from the Bureau or DMV is still required as noted by BPC § 21707.1, subsection (a)(3).

BUSINESSES NOT REQUIRED TO OBTAIN A HOUSEHOLD MOVER PERMIT

Following are examples of industries that are commonly mistaken for household movers, but they are not required to obtain a Bureau household mover permit.

FREIGHT FORWARDERS

Duties of a freight forwarder are described by 46 U.S.C. [§ 515.2](#), subsection (h), as dispatching of shipments on behalf of others and 49 U.S.C. [§ 13102](#), subparagraph (8) as an intermediary to arrange for shipments. In other words, freight forwarders arrange for the use of a motor carrier (among many other services) to ensure freight reaches its destination. In most cases, freight forwarders are subject to federal jurisdiction and must hold operating authority from the Federal Maritime Commission.

While businesses that transport used household goods may also be subject to federal jurisdiction, that is typically because the household mover activity is between states, not because the company is performing the duties of a freight forwarder. An entity that truly operates as a freight forwarder does not fall within the scope of a household mover and therefore, is not required to obtain a Bureau permit. However, any freight forwarder that does transport household goods in California must obtain a Bureau-issued permit.

MOTOR CARRIERS OF PROPERTY

Any person who operates a commercial motor vehicle, as defined by Vehicle Code [§ 34500](#), any truck with two or more axles weighing more than 10,000 pounds, or any other motor vehicle used to transport property for compensation is considered a motor carrier of property. Motor carriers of property are prohibited from operating a commercial vehicle on any highway in this state unless they have registered as a motor carrier of property with the DMV.

Possession of a motor carrier of property registration with the DMV does not exempt any person or entity who is performing the duties of a household mover from obtaining a Bureau household mover permit. Vehicle Code [§ 34601](#), subsection (a), excludes household movers, as defined by the Act, from the definition and requirements of a motor carrier of property, i.e. a motor carrier of property must obtain a household mover permit to operate within the scope of a household mover even if it is registered as a motor carrier of property with the DMV.

If you have questions regarding motor carriers of property, please visit the DMV's [Motor Carrier Permit \(MCP\) - Frequently Asked Questions](#) for more information.