

March 12, 2020

Advisory Council

Meeting Materials Packet

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

Meeting Location:

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

Teleconference Participation Option:

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

Webcast Option:

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

Advisory Council Members:

Council member applications are currently under review.

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

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

AGENDA

1. Welcome and Introductions
 - a. Facility Safety and Courtesy Items
 - b. Roll Call of the Council/Audience/Teleconference Participants Noticed
2. Operations Update
 - a. Budget
 - b. Personnel
3. Statistical Overview
 - a. Laboratory Testing
 - b. Licensing
 - c. Consumer Complaints
 - d. Enforcement
 - e. Field Investigations
4. Electronic Appliance and Repair Update
 - a. Service Contracts
5. Division of Household Moves Update
 - a. Exam Updates
 - b. Unlicensed Activity Sweeps
 - c. Tariff Fee Study Update for 2020
 - d. Household Mover Regulations – Licensing Rulemaking Proposal Workshop
6. Home Furnishings and Thermal Insulation Update
 - a. AB 2998: Survey of FR Fibers and Materials Used by Mattress Producers to Meet Federal Flammability Standards
 - b. Law Label Requirements and FAQ
7. Regulations Update
 - a. Section 100 – Repeal of Sections Inoperative as of December 2014
 - b. Home Furnishings and Thermal Insulation Substantial Relationship Criteria and Rehabilitation Criteria – Amendments to Title 4, California Code of Regulations (CCR) §§1380 and 1381
 - c. Electronic and Appliance Repair Substantial Relationship Criteria and Rehabilitation Criteria – Amendments to Title 16, CCR §§2767 and 2768
 - d. Household Mover Regulations – Initial Rulemaking Proposal: Definitions, Enforcement, Substantial Relationship and Rehabilitation Criteria, and Advertising

8. Legislative Update

- a. AB 1616 (Low) – Department of Consumer Affairs: boards: expunged convictions
- b. AB 1925 (Oberholte) – Worker status: independent contractors: small businesses
- c. AB 2185 (Patterson) – Professions and vocations: applicants licensed in other states: reciprocity
- d. SB 878 (Jones) – Department of Consumer Affairs Licensing: applications: wait times
- e. S. 3551 (Wicker) – Safer Occupancy Furniture Flammability Act (SOFFA)

9. Public Comment on Items Not on The Agenda

10. Future Agenda Items/Confirmation of Next Meeting Date

11. Adjournment

Agenda Item 2a: Budget Update

0325 - Electronic and Appliance Repair

Analysis of Fund Condition

Prepared 2.28.2020

(Dollars in Thousands)

2020-21 Governor's Budget

	PY 2018-19	CY 2019-20	Governor's Budget BY 2020-21	BY+1 2021-22
BEGINNING BALANCE	\$ 2,962	\$ 4,064	\$ 4,076	\$ 4,132
Prior Year Adjustment	\$ 799	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 3,761	\$ 4,064	\$ 4,076	\$ 4,132
REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS				
Revenues:				
4121200 Delinquent fees	\$ 107	\$ 112	\$ 113	\$ 113
4127400 Renewal fees	\$ 2,582	\$ 2,702	\$ 2,739	\$ 2,739
4129200 Other regulatory fees	\$ 24	\$ 26	\$ 27	\$ 27
4129400 Other regulatory licenses and permits	\$ 258	\$ 273	\$ 275	\$ 275
4163000 Income from surplus money investments	\$ 60	\$ 62	\$ 63	\$ 65
4171400 Escheat of unclaimed checks and warrants	\$ 18	\$ 10	\$ 10	\$ 10
Total Revenues, Transfers, and Other Adjustments	\$ 3,049	\$ 3,185	\$ 3,227	\$ 3,229
Total Resources	\$ 6,810	\$ 7,249	\$ 7,303	\$ 7,361
EXPENDITURE AND EXPENDITURE ADJUSTMENTS				
Expenditures:				
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 2,590	\$ 2,978	\$ 2,995	\$ 2,783
9892 Supplemental Pension Payments (State Operations)	\$ 21	\$ 46	\$ 46	\$ 46
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 135	\$ 149	\$ 130	\$ 130
Total Expenditures and Expenditure Adjustments	\$ 2,746	\$ 3,173	\$ 3,171	\$ 2,959
FUND BALANCE				
Reserve for economic uncertainties	\$ 4,064	\$ 4,076	\$ 4,132	\$ 4,402
Months in Reserve	15.4	15.4	16.8	17.4

0752 - Home Furnishings and Thermal Insulation Analysis of Fund Condition

Prepared 2.28.2020

(Dollars in Thousands)

2020-21 Governor's Budget

	PY 2018-19	CY 2019-20	Governor's Budget BY 2020-21	BY+1 2021-22
BEGINNING BALANCE	\$ 2,837	\$ 4,338	\$ 3,529	\$ 2,778
Prior Year Adjustment	\$ 918	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 3,755	\$ 4,338	\$ 3,529	\$ 2,778
REVENUES, TRANSFERS, AND OTHER ADJUSTMENTS				
Revenues:				
4121200 Delinquent fees	\$ 124	\$ 106	\$ 111	\$ 111
4127400 Renewal fees	\$ 3,833	\$ 3,872	\$ 3,910	\$ 3,910
4129200 Other regulatory fees	\$ 121	\$ 117	\$ 112	\$ 112
4129400 Other regulatory licenses and permits	\$ 1,028	\$ 949	\$ 956	\$ 975
4163000 Investment Income - Surplus Money Investments	\$ 71	\$ 51	\$ 40	\$ 28
4170400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -
4171400 Escheat - Unclaimed Checks, Warrants, Bonds, and Coupons	\$ 16	\$ 10	\$ 10	\$ 10
4171500 Escheat - Unclaimed Property	\$ -	\$ 7	\$ 7	\$ 7
4172500 Miscellaneous revenues	\$ 1	\$ 1	\$ -	\$ -
Total Revenues, Transfers, and Other Adjustments	\$ 5,194	\$ 5,113	\$ 5,146	\$ 5,153
Total Resources	\$ 8,949	\$ 9,451	\$ 8,675	\$ 7,931
EXPENDITURE AND EXPENDITURE ADJUSTMENTS				
Expenditures:				
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 4,359	\$ 5,521	\$ 5,527	\$ 5,527
8880 Financial Information System for California (State Operations)	\$ 1	\$ -1	\$ -	\$ -
9892 Supplemental Pension Payments (State Operations)	\$ 50	\$ 111	\$ 111	\$ 111
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 201	\$ 291	\$ 259	\$ 259
Total Expenditures and Expenditure Adjustments	\$ 4,611	\$ 5,922	\$ 5,897	\$ 5,897
FUND BALANCE				
Reserve for economic uncertainties	\$ 4,338	\$ 3,529	\$ 2,778	\$ 2,034
Months in Reserve	8.8	7.2	5.7	4.0

3315 - Household Movers Fund

Analysis of Fund Condition

Prepared 2.28.2020

(Dollars in Thousands)

2020-21 Governor's Budget

	PY 2018-19	CY 2019-20	Governor's Budget BY 2020-21	BY+1 2021-22
BEGINNING BALANCE	\$ -	\$ 2,336	\$ 2,186	\$ 1,176
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ -	\$ 2,336	\$ 2,186	\$ 1,176
REV #				
Revenues:				
4121200 Delinquency Fees	\$ 40	\$ 40	\$ 41	\$ 41
4127400 Renewal fees	\$ 2,016	\$ 2,032	\$ 2,052	\$ 2,052
4129200 Other Regulatory Fees	\$ 53	\$ 52	\$ 53	\$ 53
4129400 Other Regulatory Licenses and Permits	\$ 57	\$ 90	\$ 90	\$ 90
4163000 Investment Income - Surplus Money Investments	\$ -	\$ 28	\$ 26	\$ 26
4173000 Penalty Assessments - Other	\$ -	\$ 2	\$ 2	\$ 2
Totals, Revenues	\$ 2,166	\$ 2,244	\$ 2,264	\$ 2,264
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	\$ -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	\$ 3,474	\$ 2,223	\$ 2,243	\$ 2,243
Total Resources	\$ 3,474	\$ 4,559	\$ 4,429	\$ 3,419
EXPENDITURE AND EXPENDITURE ADJUSTMENTS				
Expenditures:				
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 1,138	\$ 2,373	\$ 2,971	\$ 1,952
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ -	\$ -	\$ 282	\$ 282
Total Expenditures and Expenditure Adjustments	\$ 1,138	\$ 2,373	\$ 3,253	\$ 2,234
FUND BALANCE				
Reserve for economic uncertainties	\$ 2,336	\$ 2,186	\$ 1,176	\$ 1,185
MONTHS IN RESERVE	11.8	8.1	6.3	6.2

Agenda Item 3a: Laboratory Statistical Overview

LAB STATISTICS

Data for FYTD 07/01/2019 – 02/20/2020

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

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

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

FR Chemical Labeling and Analysis

Samples Received with the Flame Retardant Chemical Statement (TB117-2013) 07/01/19-02/20/2020				
“NO” Chemicals Checked	Contains Chemicals	No Box Checked	FR Doc Request Sent	DTSC Analysis Requested
58	4	2	8	8
90%	7%	3%		

Samples Analyzed with the “NO” Flame Retardant Chemical Statement 07/01/19-02/20/2020				
Type Test	Pass		Fail	
	No.	%	No.	%
DTSC Analysis (8)*	3	38	---	---
FR Doc Review (8)**	3	38	2	25

*Review in progress for five components

**Three samples are still In progress

Agenda Item 3b: Licensing Statistical Overview

LICENSING STATISTICS

February 2020

Electronic and Appliance Repair Registrations				
	2016-17	2017-18	2018-19	2019-20
Appliance Service Dealers	2,621	2,632	2,634	2593
Electronic Service Dealer	5,013	4,914	4,849	4407
Combination Electronic/Appliance Service Dealer	624	583	557	504
Service Contract Administrator	44	47	50	58
Service Contract Seller	11,575	12,633	12,026	11,530
Total Active EAR Registrations	19,877	20,809	20,152	20,788

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

Geographic Breakdown of Importers/Manufacturers/Wholesalers as of 3/2/2020	
Importer – California	607
Importer – Other States	911
Importer/Manufacturer – Overseas	6,905
Manufacturer – California	764
Manufacturer – Other States	956
Wholesalers - California	164
Wholesalers – Other States	55
Wholesalers – Overseas	2

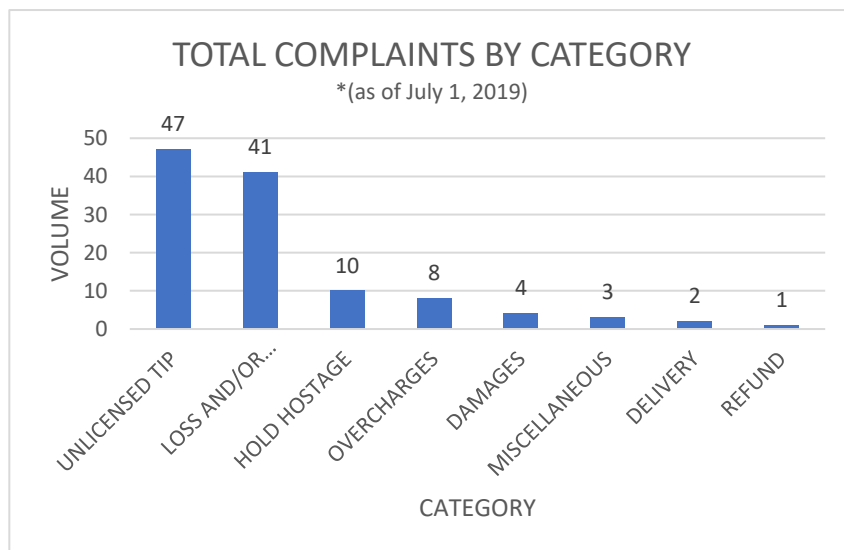
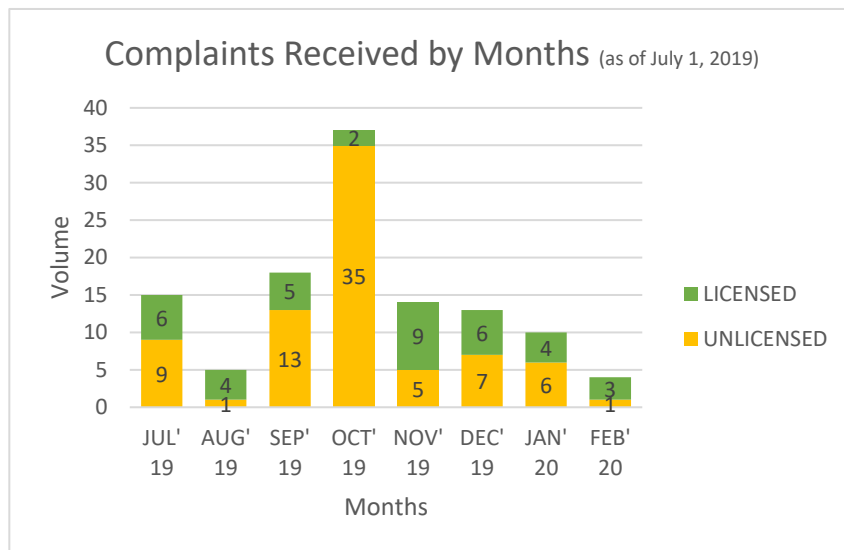
Household Movers Permits				
	2016-17	2017-18	2018-19	2019-20
Permits Issued			36	94
Exams Administered			36	107
Exam Pass Rate			64%	89%
Total Active HHM Permits			936	1004

Agenda Item 3c: 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*	116	98



BEAR/BHFTI

*07/01/2019 to 02/12/2020

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*	325	205

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*	186	128

Agenda Items 3d: Enforcement Statistical Overview

BEAR/BHFTI ENFORCEMENT STATISTICS

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*	5	0	5

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*	547	275	822	434	205	639

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*	46	16	62

Agenda Items 3e: Field Investigations Statistical Overview

HOUSEHOLD MOVERS INVESTIGATIONS STATISTICS

November 1, 2019 – February 29, 2020

Household Mover Cases Under Investigation	
Hold Hostage	18*
Unlicensed Activity	63
Other	2
Total	69

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

Hold Hostage Situations	
Resolved	11
Pending	7
Forwarded to Other Agencies	4**
Total	18

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

Cease and Desist Letters Issued	
(Failure of Movers to Cease and Desist will result in Administrative Citations)	36

Citations Issued	
November 2019 – February 2020	6

**Agenda Item 5d: Household Mover Regulations –
Licensing Rulemaking Proposal Workshop**



**HOUSEHOLD MOVER PERMIT REQUIREMENTS REGULATION WORKSHOP
Teleconference Meeting
Wednesday, March 25, 2020, 1:00 p.m. – 4:00 p.m.**

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

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

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

Agenda

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

The meeting facilities are accessible to individuals with physical disabilities. The hearing impaired may access the meeting by calling TDD (800) 326-2297. A person who needs a disability-related accommodation or modifications to participate in the meeting may make a request by contacting Melissa Del Duca at (916) 999-2082 or by sending an email to: Melissa.Del-Duca@dca.ca.gov. Providing at least five working days' notice before the meeting will help ensure the availability of accommodations or modifications.

Agenda Item 7b: Home Furnishings and Thermal Insulation Substantial Relationship Criteria and Rehabilitation Criteria – Amendments to Title 4, California Code of Regulations §§1380 and 1381

California Code of Regulations
Title 4. Professional and Vocational Regulations
Division 3. Bureau of Home Furnishings

PROPOSED LANGUAGE

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

Article 15

§1380. Substantial Relationship Criteria.

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

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

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

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

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

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

- (1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 3 of Division 8 of the Business and Professions Code.
- (2) Crimes or acts involving dishonesty, fraud, deceit, or theft with the intent to benefit oneself or another or to harm another.
- (3) Violating or attempting to violate Article 1 (commencing with Section 17500) of Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to false or misleading advertising.

(d) If an applicant or licensee wishes to contest a license denial, suspension, or revocation based on a conviction, the applicant or licensee may request a hearing pursuant to Business and Professions Code section 19209 to determine if the license should be denied, suspended, or revoked.

Note: Authority cited: Sections 481, 493, and 19034, Business and Professions Code. Reference: Sections 141, 475, 480, and 481, 488, 490, 493, 19063, 19064, 19209, and 19210, Business and Professions Code.

§1381. Criteria for Rehabilitation.

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

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

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

- (1) The nature and gravity of the crime(s).
- (2) The length(s) of the applicable parole or probation period(s).
- (3) The extent to which the applicable parole or probation period was shortened or lengthened and the reason(s) the period was modified.
- (4) The terms or conditions of parole or probation and the extent to which they bear

on the applicant's or licensee's rehabilitation.

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

(b) If subdivision (a) is inapplicable or the Bureau determines the applicant or licensee did not make the showing of rehabilitation based on the criteria in subdivision (a), the Bureau shall apply the following criteria in evaluating an applicant's or licensee's rehabilitation.

The Bureau shall find that the applicant or licensee made a showing of rehabilitation and is presently eligible for a license if, after considering the following criteria, the Bureau finds the applicant or licensee is rehabilitated:

- (1) The nature and severity of the crime(s) or act(s) that are under consideration as the grounds for denial, suspension, or revocation.

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

Note: Authority cited: Sections 482 and 19034, Business and Professions Code.
Reference: Sections 480, 481, ~~and 482~~, 488, 490, and 493, Business and Professions Code.

**Agenda Item 7c: Electronic and Appliance Repair
Substantial Relationship Criteria and
Rehabilitation Criteria – Amendments to Title 16,
CCR §§2767 and 2768**

California Code of Regulations
Title 16. Professional and Vocational Regulations
Division 27. Bureau of Electronic and Appliance
Repair

PROPOSED
LANGUAGE

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

Article 7

§ 2767. Substantial Relationship Criteria

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

(b) In making the substantial relationship determination required under subsection

(a) for a crime, the Bureau shall consider the following criteria:

(1) The nature and gravity of the offense:

(2) The number of years elapsed since the date of the offense;

and (3) The nature and duties of a service dealer or service contractor.

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

~~(a)~~(1) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 20, Division 3 of the Business and Professions Code.

~~(b) Conviction of a crime involving fiscal dishonesty.~~

(2) Crimes or acts involving dishonesty, fraud, deceit or theft with the intent to benefit oneself or another or to harm another. This includes, but is not limited to:

(A) Making or authorizing any statement or advertisement that is untrue or misleading, and that is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(B) Making any false promises of a character likely to influence, persuade, or

induce a customer to authorize the repair, installation, service, or maintenance of the equipment.

(C) Conduct constituting incompetence or negligence.

(D) Any willful departure from or disregard of accepted trade standards for good and workmanlike installation or repair.

(3) Crimes involving physical violence against others.

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

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

§ 2768. Criteria for Rehabilitation

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

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

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

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

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

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

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

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

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

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

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

if, after considering the following criteria, the Bureau finds the applicant or registrant is rehabilitated:

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

~~(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under~~

~~consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code when considering an applicant pursuant to subsection (a)(1) of this section.~~

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

(2) The total criminal record, including evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial,

suspension, or revocation under Division 1.5 (commencing with Section 475) of the Business and Professions Code.

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

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

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

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

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

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

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

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

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

NOTE: Authority cited: Sections 482, 9814 and 9814.5, Business and Professions Code. Reference: Sections 475, 480, 481, 482, 488, 490, 493 and 9841, Business and Professions Code.

Agenda Item 8a: AB 1616

AMENDED IN ASSEMBLY JANUARY 6, 2020

AMENDED IN ASSEMBLY APRIL 1, 2019

california legislature—2019–20 regular session

ASSEMBLY BILL

No. 1616

Introduced by Assembly Member Low

February 22, 2019

An act ~~to amend Section 10295.6 of the Insurance Code, relating to insurance.~~ *add Section 493.5 to the Business and Professions Code, relating to professions and vocations.*

legislative counsel's digest

AB 1616, as amended, Low. ~~Accelerated—death—benefits.~~ *Department of Consumer Affairs: boards: expunged convictions.*

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

This bill would require a board within the department that has posted on its internet website that a person's license was revoked because the

person was convicted of a crime to, within 6 months of receiving the expungement order for the underlying offense from the person, post notification of the expungement order and the date thereof on the board's internet website if the person applies for licensure or is relicensed, or remove the initial posting on its internet website that the person's license was revoked if the person is not currently licensed and does not reapply for licensure, as specified. The bill would require a person to pay a fee, to be determined by the department, to the board for the cost of administering the bill's provisions.

~~Existing law regulates classes of insurance, including life insurance, and prescribes certain requirements governing the payment of an accelerated death benefit under a life insurance policy. Existing law authorizes an accelerated death benefit to be added to a life insurance policy to provide for the advance payment of a part of the death proceeds if a qualifying event, including a terminal or chronic illness, occurs. Existing law prohibits an accelerated death benefit from being effective more than 30 days following the effective date of the policy provision, rider, endorsement, or certificate.~~

~~This bill would authorize the effective period of an accelerated death benefit to be extended to not more than 60 days following the effective date of the policy provision, rider, endorsement, or certificate.~~

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

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

- 1 SECTION 1. Section 493.5 is added to the Business and
- 2 Professions Code, to read:
- 3 493.5. (a) A board within the department that has posted on
- 4 its internet website that a person's license was revoked because
- 5 the person was convicted of a crime, upon receiving from the
- 6 person a certified copy of an expungement order granted pursuant
- 7 to Section 1203.4 of the Penal Code for the underlying offense,
- 8 shall, within six months of receiving the expungement order, unless
- 9 it is otherwise prohibited by law, or by other terms or conditions,
- 10 do either of the following:
- 11 (1) If the person reapplies for licensure or has been relicensed,
- 12 post notification of the expungement order and the date thereof
- 13 on its internet website.

1 (2) *If the person is not currently licensed and does not reapply*
2 *for licensure, remove the initial posting on its internet website that*
3 *the person's license was revoked.*

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

9 (c) *For purposes of this section "board" means an entity listed*
10 *in Section 101.*

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

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

15 ~~10295.6. (a) If a policyholder or certificate holder requests an~~
16 ~~acceleration of death benefits, the insurer shall send a statement~~
17 ~~to the policyholder or certificate holder and irrevocable beneficiary~~
18 ~~showing any effect that the payment of the accelerated death benefit~~
19 ~~would have on the policy's cash value, accumulation account,~~
20 ~~death benefit, premium, policy loans, and policy liens. The~~
21 ~~statement shall disclose that receipt of accelerated death benefit~~
22 ~~payments may adversely affect the recipient's eligibility for~~
23 ~~Medicaid or other government benefits or entitlements. In addition,~~
24 ~~receipt of an accelerated death benefit payment may be taxable~~
25 ~~and assistance should be sought from a personal tax adviser. If a~~
26 ~~previous disclosure statement becomes invalid as a result of an~~
27 ~~acceleration of the death benefit, the insurer shall send a revised~~
28 ~~disclosure statement to the policyholder or certificate holder and~~
29 ~~irrevocable beneficiary.~~

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

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

39 ~~(d) An insurer shall not unfairly discriminate among insureds~~
40 ~~with different qualifying events covered under the policy or among~~

1 ~~insureds with similar qualifying events covered under the policy.~~
2 ~~An insurer shall not apply further conditions on the payment of~~
3 ~~the accelerated death benefits other than those conditions specified~~
4 ~~in the accelerated death benefit.~~

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

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

20 ~~(g) If payment of an accelerated death benefit results in a pro~~
21 ~~rata reduction in cash value, the payment may be applied toward~~
22 ~~repaying a portion of the loan equal to a pro rata portion of any~~
23 ~~outstanding policy loans if disclosure of the effect of acceleration~~
24 ~~upon any remaining death benefit, cash value or accumulation~~
25 ~~account, policy loan, and premium payments, including a statement~~
26 ~~of the possibility of termination of any remaining death benefit,~~
27 ~~is provided to the policyholder or certificate holder. The~~
28 ~~policyholder or certificate holder shall provide written consent~~
29 ~~authorizing any other arrangement for the repayment of outstanding~~
30 ~~policy loans.~~

Agenda Item 8b: AB 1925

Introduced by Assembly Member Obernolte

January 14, 2020

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

legislative counsel's digest

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

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

Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business. This test is commonly known as the “ABC” test. Existing

law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

Existing law exempts specified occupations and business relationships from the application of Dynamex and these provisions. Existing law instead provides that these exempt relationships are governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341.

This bill would expand the above-described exemptions to also include small businesses, as defined.

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

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

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

4 2750.3. (a) (1) For purposes of ~~the provisions of~~ this code
5 and the Unemployment Insurance Code, and for the *purposes of*
6 wage orders of the Industrial Welfare Commission, a person
7 providing labor or services for remuneration shall be considered
8 an employee rather than an independent contractor unless the hiring
9 entity demonstrates that all of the following conditions are satisfied:

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

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

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

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

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

9 (b) Subdivision (a) and the holding in *Dynamex Operations*
10 ~~*West, W. Inc. v. Superior Court of Los Angeles*~~ (2018) 4 Cal.5th
11 903—~~(*Dynamex*)~~; (*Dynamex*) do not apply to the following
12 occupations as defined in the paragraphs below, and instead, the
13 determination of employee or independent contractor status for
14 individuals in those occupations shall be governed by *Borello*.

15 (1) A person or organization who is licensed by the Department
16 of Insurance pursuant to Chapter 5 (commencing with Section
17 1621), Chapter 6 (commencing with Section 1760), or Chapter 8
18 (commencing with Section 1831) of Part 2 of Division 1 of the
19 Insurance Code.

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

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

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

37 (A) *Registered with* the Securities and Exchange Commission
38 or the Financial Industry Regulatory ~~Authority or licensed by~~
39 *Authority*.

1 *(B) Licensed by* the State of California under Chapter 2
2 (commencing with Section 25210) or Chapter 3 (commencing with
3 Section 25230) of Division 1 of Part 3 of Title 4 of the
4 Corporations Code.

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

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

10 (A) For the purposes of this paragraph:

11 (i) “American vessel” has the same meaning as defined in
12 Section 125.5 of the Unemployment Insurance Code.

13 (ii) “Commercial fisherman” means a person who has a valid,
14 unrevoked commercial fishing license issued pursuant to Article
15 3 (commencing with Section 7850) of Chapter 1 of Part 3 of
16 Division 6 of the Fish and Game Code.

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

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

32 (C) *(i)* On or before March 1, 2021, and each March 1
33 thereafter, the Employment Development Department shall issue
34 an annual report to the Legislature on the use of unemployment
35 insurance in the commercial fishing industry. This report shall
36 include, but not be limited to, ~~reporting~~ *all of the following:*

37 *(I) Reporting* the number of commercial fishermen who apply
38 for unemployment insurance ~~benefits, the~~ *benefits.*

39 *(II) The* number of commercial fishermen who have their claims
40 ~~disputed, the number~~ *disputed.*

1 *(III) The* number of commercial fishermen who have their
2 claims ~~denied, and the~~ *denied.*

3 *(IV) The* number of commercial fishermen who receive
4 unemployment insurance benefits. ~~The~~

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

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

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

13 (A) For purposes of this paragraph:

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

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

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

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

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

30 *(8) (A) A small business.*

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

33 *(i) Is independently owned and operated.*

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

35 *(iii) Has fewer than 100 employees.*

36 *(iv) Has average gross receipts of fifteen million dollars*
37 *(\$15,000,000) or less over the previous three years.*

38 (c) (1) Subdivision (a) and the holding in Dynamex do not
39 apply to a contract for “professional services” as defined below,
40 and instead the determination of whether the individual is an

1 employee or independent contractor shall be governed by Borello
2 if the hiring entity demonstrates that all of the following factors
3 are satisfied:

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

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

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

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

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

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

23 (2) For purposes of this subdivision:

24 (A) An "individual" includes an individual providing services
25 through a sole proprietorship or other business entity.

26 (B) "Professional services" means services that meet any of the
27 following:

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

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

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

39 ~~(H)~~ a

- 1 (I) A person regulated by the Attorney General under Article
2 2.6 (commencing with Section 17550) of Chapter 1 of Part 3 of
3 Division 7 of the Business and Professions Code, or (II) an Code.
4 (II) An individual who is a seller of travel within the meaning
5 of subdivision (a) of Section 17550.1 of the Business and
6 Professions Code and who is exempt from the registration under
7 subdivision (g) of Section 17550.20 of the Business and Professions
8 Code.
- 9 (iv) Graphic design.
 - 10 (v) Grant writer.
 - 11 (vi) Fine artist.
 - 12 (vii) Services provided by an enrolled agent who is licensed by
13 the United States Department of the Treasury to practice before
14 the Internal Revenue Service pursuant to Part 10 of Subtitle A of
15 Title 31 of the Code of Federal Regulations.
 - 16 (viii) Payment processing agent through an independent sales
17 organization.
 - 18 (ix) (I) Services provided by a still photographer or
19 photojournalist who ~~do~~ does not license content submissions to
20 the putative employer more than 35 times per year. This clause is
21 not applicable to an individual who works on motion pictures,
22 which includes, but is not limited to, projects produced for
23 theatrical, television, internet streaming for any device, commercial
24 productions, broadcast news, music videos, and live shows, whether
25 distributed live or recorded for later broadcast, regardless of the
26 distribution platform. For
27 (II) For purposes of this ~~clause~~ clause, a “submission” is one
28 or more items or forms of content produced by a still photographer
29 or photojournalist ~~that: (I) pertains that meets all of the following:~~
30 (ia) Pertains to a specific event or specific ~~subject; (II) is~~
31 ~~subject.~~
32 (ib) Is provided for in a contract that defines the scope of the
33 ~~work; and (III) is~~ work.
34 (ic) Is accepted by and licensed to the publication or stock
35 photography company and published or posted. ~~Nothing~~
36 (III) Nothing in this section shall prevent a photographer or
37 artist from displaying their work product for sale.
 - 38 (x) (I) Services provided by a freelance writer, editor, or
39 newspaper cartoonist who does not provide content submissions
40 to the putative employer more than 35 times per year. Items of

1 content produced on a recurring basis related to a general topic
 2 shall be considered separate submissions for purposes of calculating
 3 the 35 times per year. ~~For~~

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

7 (ia) *Pertains* to a specific event or ~~topic; (II) is topic.~~

8 (ib) *Is* provided for in a contract that defines the scope of the
 9 ~~work; (III) is work.~~

10 (ic) *Is* accepted by the publication or company and published
 11 or posted for sale.

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

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

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

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

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

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

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

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

32 (1) A real estate licensee licensed by the State of California
 33 pursuant to Division 4 (commencing with Section 10000) of the
 34 Business and Professions Code, for whom the determination of
 35 employee or independent contractor status shall be governed by
 36 subdivision (b) of Section 10032 of the Business and Professions
 37 Code. If that section is not applicable, then this determination shall
 38 be governed as follows: ~~(A) for~~

39 (A) For purposes of unemployment insurance by Section 650
 40 of the Unemployment Insurance ~~Code; (B) for Code.~~

1 (B) For purposes of ~~workers~~ workers' compensation by Section
2 3200 et ~~seq.;~~ and (C) for *seq.*

3 (C) For all other purposes in the Labor Code by Borello. The
4 statutorily imposed duties of a responsible broker under Section
5 10015.1 of the Business and Professions Code are not factors to
6 be considered under the Borello test.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (1) The subcontract is in writing.

37 (2) The subcontractor is licensed by the ~~Contractors~~ *Contractors'*
38 State License Board and the work is within the scope of that
39 license.

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

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

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

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

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

16 (8) (A) Paragraph (2) shall not apply to a subcontractor
17 providing construction trucking services for which a contractor's
18 license is not required by Chapter 9 (commencing with Section
19 7000) of Division 3 of the Business and Professions Code, provided
20 that all of the following criteria are satisfied:

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

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

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

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

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

39 (C) For purposes of this paragraph, "construction trucking
40 services" mean hauling and trucking services provided in the

1 construction industry pursuant to a contract with a licensed
2 contractor utilizing vehicles that require a commercial driver's
3 license to operate or have a gross vehicle weight rating of 26,001
4 or more pounds.

5 (D) This paragraph shall only apply to work performed
before 6 January 1, 2022.

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

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

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

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

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

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

35 (D) The service provider delivers services to the client under
36 *the* service provider's name, rather than under the name of the
37 referral agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (3) This subdivision does not apply to an individual worker, as
40 opposed to a business entity, who performs services for a client

1 through a referral agency. The determination of whether such an
2 individual is an employee of a referral agency is governed by
3 subdivision (a).

4 (h) Subdivision (a) and the holding in *Dynamex* do not apply
5 to the relationship between a motor club holding a certificate of
6 authority issued pursuant to Chapter 2 (commencing with Section
7 12160) of Part 5 of Division 2 of the Insurance Code and an
8 individual performing services pursuant to a contract between the
9 motor club and a third party to provide motor club services utilizing
10 the employees and vehicles of the third party and, instead, the
11 determination of whether such an individual is an employee of the
12 motor club shall be governed by *Borello*, if the motor club
13 demonstrates that the third party is a separate and independent
14 business from the motor club.

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

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

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

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

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Agenda Item 8c: AB 2185

ASSEMBLY BILL

No. 2185

Introduced by Assembly Members Patterson and Gallagher

February 11, 2020

An act to add Section 117 to the Business and Professions Code, relating to professions and vocations.

legislative counsel's digest

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

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

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

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

prosecuted for a violation of those licensure provisions constituting a crime, the bill would impose a state-mandated program.

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

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

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

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

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

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

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

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

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

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

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

26 *(6) The person would not be denied licensure under any other*
 27 *provision of this code, including, but not limited to, disqualification*
 28 *for criminal history relating to the license sought.*

1 (7) *The person pays all applicable fees for licensure.*

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

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

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

13 SEC. 2. *No reimbursement is required by this act pursuant to*
14 *Section 6 of Article XIII B of the California Constitution because*
15 *the only costs that may be incurred by a local agency or school*
16 *district will be incurred because this act creates a new crime or*
17 *infraction, eliminates a crime or infraction, or changes the penalty*
18 *for a crime or infraction, within the meaning of Section 17556 of*
19 *the Government Code, or changes the definition of a crime within*
20 *the meaning of Section 6 of Article XIII B of the California*
21 *Constitution.*

Agenda Item 8d: SB 878

Introduced by Senator Jones

January 22, 2020

An act to add Section 139.5 to the Business and Professions Code, relating to professions and vocations.

legislative counsel's digest

SB 878, as introduced, Jones. Department of Consumer Affairs Licensing: applications: wait times.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.

This bill would require each board within the department that issues licenses to prominently display the current timeframe for processing initial and renewal license applications on its internet website, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

- 1 *SECTION 1. Section 139.5 is added to the Business and*
- 2 *Professions Code, to read:*
- 3 *139.5. Each board, as defined in section 22, within the*
- 4 *department that issues a license shall do both of the following:*
- 5 *(a) Prominently display the current timeframe for processing*
- 6 *initial and renewal license applications on its internet website.*

- 1 *(b) With respect to the information displayed on the website,*
- 2 *specify the average timeframe for each license category.*

Agenda Item 8e: 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