

AMENDED IN SENATE APRIL 25, 2011
AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 538

Introduced by Senator Price

February 17, 2011

An act to amend Sections ~~2701 and 2708~~ of 160, 2701, 2708, 2786, and 2798 of, and to add Sections 2770.15, 2786.2, and 2786.5 to, the Business and Professions Code, to amend Section 16310 of the Government Code, and to amend Section 830.3 of the Penal Code, relating to nursing, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 538, as amended, Price. Nursing.

Existing law provides for the regulation of various professions and vocations by regulatory boards within the Department of Consumer Affairs. Existing law creates in the department a Division of Investigation and authorizes the Director of Consumer Affairs to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law the enforcement of which is charged to the department or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards. Investigators of the Division of Investigation and of the Medical Board of California and the Dental Board of California have the authority of peace officers. Those entities are also authorized to employ individuals who are not peace officers to provide investigative services.

This bill would extend the application of those provisions to the Board of Registered Nursing. The bill would make conforming changes to related provisions.

Existing law, until January 1, 2012, creates within the Department of Consumer Affairs the Board of Registered Nursing, and provides for the board to select an executive director. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee of the Legislature.

This bill would extend the operation of these provisions until January 1, 2016, and would specify that the board is subject to review by the appropriate policy committees of the Legislature.

Existing law requires the Board of Registered Nursing to establish criteria for the acceptance, denial, or termination of licentiates in a diversion program for the rehabilitation of licensees.

This bill would require the Bureau of State Audits to audit the diversion program of the board, upon a specified request by the Legislature, to be funded by nongeneral fund moneys from the Board of Registered Nursing Fund.

Existing law requires the board to approve and regulate registered nursing schools that are institutions of higher education or are affiliated with an institution of higher education, as specified. Existing law requires a school of nursing that is not affiliated with an institution of higher education to make an agreement with such an institution for purposes of awarding nursing degrees.

This bill would instead subject a school of nursing that is not an institution of higher education or affiliated with an institution of higher education to the requirements set forth in the Private Postsecondary Education Act of 2009, and would subject all approved institutions of higher education and those schools to specified fees for deposit into the Board of Registered Nursing Fund, a continuously appropriated fund. The bill would also impose an annual fee, payable to the Bureau of Private Postsecondary Education, for deposit into the Private Postsecondary and Vocational Education Administration Fund. Because the bill adds a new source of revenue to a continuously appropriated fund, the bill would make an appropriation.

Existing law provides that it is unlawful for anyone to conduct a school of nursing unless the school has been approved by the board.

This bill would authorize the board to issue cease and desist orders to a school of nursing that is not approved by the board and would require the board to notify the office of the Attorney General of such a school. The bill would also provide that it is unprofessional conduct for any registered nurse to violate that provision.

Under circumstances in which the General Fund in the State Treasury is or will be exhausted, existing law authorizes the Governor to order the Controller to direct the transfer of all or any part of the moneys not needed in other funds or accounts to the General Fund from those funds or accounts. Existing law provides that all moneys so transferred shall be returned to the funds or accounts from which they were transferred as soon as there are sufficient moneys in the General Fund to return them. Existing law prohibits the transfer of those loans if the transfer will interfere with the object for which a special fund was created or any transfer from the Central Valley Water Project Construction Fund, the Central Valley Water Project Revenue Fund, or the California Water Resources Development Bond Fund.

This bill would add the Board of Registered Nursing Fund to the enumerated funds for which a transfer may not be made to the General Fund under the above circumstances.

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

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

1 *SECTION 1. Section 160 of the Business and Professions Code*
2 *is amended to read:*

3 160. (a) The Chief and ~~all~~, *designated* investigators of the
4 Division of Investigation of the department ~~and all~~, *designated*
5 investigators of the Medical Board of California ~~and~~, *designated*
6 *investigators of the Dental Board of California, and designated*
7 *investigators of the Board of Registered Nursing* have the authority
8 of peace officers while engaged in exercising the powers granted
9 or performing the duties imposed upon them or the division in
10 investigating the laws administered by the various boards
11 comprising the department or commencing directly or indirectly
12 any criminal prosecution arising from any investigation conducted
13 under these laws. All persons herein referred to shall be deemed
14 to be acting within the scope of employment with respect to all
15 acts and matters set forth in this section.

16 (b) The Division of Investigation of the department, the Medical
17 Board of California, ~~and~~ the Dental Board of California, *and the*
18 *Board of Registered Nursing* may employ individuals; who are
19 not peace officers; to provide investigative services.

1 SECTION 1.

2 SEC. 2. Section 2701 of the Business and Professions Code is
3 amended to read:

4 2701. (a) There is in the Department of Consumer Affairs the
5 Board of Registered Nursing consisting of nine members.

6 (b) Within the meaning of this chapter, board, or the board,
7 refers to the Board of Registered Nursing. Any reference in state
8 law to the Board of Nurse Examiners of the State of California or
9 California Board of Nursing Education and Nurse Registration
10 shall be construed to refer to the Board of Registered Nursing.

11 (c) This section shall remain in effect only until January 1, 2016,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2016, deletes or extends that date.
14 Notwithstanding any other provision of law, the repeal of this
15 section renders the board subject to review by the appropriate
16 policy committees of the Legislature.

17 ~~SEC. 2.~~

18 SEC. 3. Section 2708 of the Business and Professions Code is
19 amended to read:

20 2708. (a) The board shall appoint an executive officer who
21 shall perform the duties delegated by the board and who shall be
22 responsible to it for the accomplishment of those duties.

23 (b) The executive officer shall be a nurse currently licensed
24 under this chapter and shall possess other qualifications as
25 determined by the board.

26 (c) The executive officer shall not be a member of the board.

27 (d) This section shall remain in effect only until January 1, 2016,
28 and as of that date is repealed, unless a later enacted statute, that
29 is enacted before January 1, 2016, deletes or extends that date.

30 SEC. 4. *Section 2770.15 is added to the Business and*
31 *Professions Code, to read:*

32 *2770.15. (a) If requested by the Legislature through the Joint*
33 *Legislative Audit Committee in 2012, the Bureau of State Audits*
34 *shall conduct a thorough performance audit of the board's*
35 *diversion program to evaluate the effectiveness and efficiency of*
36 *the program, and make recommendations regarding the*
37 *continuation of the program and any changes or reforms required*
38 *to ensure that licensees participating in the program are*
39 *appropriately monitored and that the public is protected from*
40 *licensees who are impaired due to alcohol or drug abuse or mental*

1 or physical illness. The audit shall be completed by January 1,
2 2013. The board and its staff shall cooperate with the audit, and
3 the board shall provide data, information, and case files as
4 requested by the auditor to perform all of its duties. The provision
5 of confidential data, information, and case files by the board to
6 the auditor shall not constitute a waiver of any exemption from
7 disclosure or discovery or of any confidentiality protection or
8 privilege otherwise provided by law that is applicable to the data,
9 information, or case files.

10 (b) The audit performed under subdivision (b) shall be paid for
11 with nongeneral fund moneys from the Board of Registered Nursing
12 Fund.

13 SEC. 5. Section 2786 of the Business and Professions Code is
14 amended to read:

15 2786. (a) An approved school of nursing is one that has been
16 approved by the board, gives the course of instruction approved
17 by the board, covering not less than two academic years, is
18 affiliated or conducted in connection with one or more hospitals,
19 and is an institution of higher education or is affiliated with an
20 institution of higher education. For purposes of this section,
21 “institution of higher education” includes, but is not limited to,
22 community colleges offering an associate of arts or associate of
23 science degree and private postsecondary institutions offering an
24 associate of arts ~~or~~, associate of science ~~degree~~, or baccalaureate
25 degree. ~~An approved~~

26 (b) A school of nursing that is not an institution of higher
27 education ~~shall make an agreement with an institution of higher~~
28 ~~education in the same general location or affiliated with an~~
29 ~~institution of higher education, and is subject to the Private~~
30 ~~Postsecondary Education Act of 2009, Chapter 8 (commencing~~
31 ~~with Section 94800) of Part 59 of Division 10 of Title 3 of the~~
32 ~~Education Code, shall be approved by the board to grant an~~
33 ~~associate of arts or associate of science degree to individuals who~~
34 ~~graduate from the school of nursing or to grant a baccalaureate~~
35 ~~degree in nursing with successful completion of an additional~~
36 ~~course of study as approved by the board and the institution~~
37 ~~involved.~~

38 ~~(b)~~

39 (c) The board shall determine by regulation the required subjects
40 of instruction to be completed in an approved school of nursing

1 for licensure as a registered nurse and shall include the minimum
2 units of theory and clinical experience necessary to achieve
3 essential clinical competency at the entry level of the registered
4 nurse. The board's standards shall be designed to encourage all
5 schools to provide clinical instruction in all phases of the
6 educational process.

7 ~~(e)~~

8 (d) The board shall perform or cause to be performed an analysis
9 of the practice of the registered nurse no less than every five years.
10 Results of the analysis shall be utilized to assist in the
11 determination of the required subjects of instruction, validation of
12 the licensing examination, and assessment of the current practice
13 of nursing.

14 *SEC. 6. Section 2786.2 is added to the Business and Professions*
15 *Code, to read:*

16 *2786.2. All private postsecondary schools approved by the*
17 *board pursuant to subdivision (b) of Section 2786 shall comply*
18 *with Article 8 (commencing with Section 94897) to Article 16*
19 *(commencing with Section 94928), inclusive, of, and shall be*
20 *subject to Article 18 (commencing with Section 94932) of, Chapter*
21 *8 of Part 59 of Division 10 of Title 3 of the Education Code. The*
22 *board shall ensure compliance with these provisions and shall be*
23 *responsible for the handling of student complaints regarding these*
24 *approved schools of nursing.*

25 *SEC. 7. Section 2786.5 is added to the Business and Professions*
26 *Code, to read:*

27 *2786.5. (a) An institution of higher education or a private*
28 *postsecondary school approved by the board pursuant to*
29 *subdivision (b) of Section 2786 shall remit to the board for deposit*
30 *in the Board of Registered Nursing Fund the following fees, in*
31 *accordance with the following schedule:*

32 *(1) Application fee for an approval to operate: five thousand*
33 *dollars (\$5,000).*

34 *(2) Renewal fee for the institution: three thousand five hundred*
35 *dollars (\$3,500).*

36 *(3) Processing fee for authorization of a substantive change to*
37 *an approval to operate: five hundred dollars (\$500).*

38 *(b) In addition to any fees paid to the board pursuant to*
39 *paragraphs (1) to (3), inclusive, each school that is approved to*
40 *operate pursuant to subdivision (b) of Section 2786 shall remit an*

1 *annual institutional fee to the Bureau for Private Postsecondary*
2 *Education, in an amount equal to three-quarters of 1 percent of*
3 *the school's annual revenues derived from students in California,*
4 *but not exceeding a total of twenty-five thousand dollars (\$25,000)*
5 *annually, to be deposited in the Private Postsecondary and*
6 *Vocational Education Administration Fund.*

7 *(c) If the board determines that the annual cost of providing*
8 *oversight and review of an institution, as required by this article,*
9 *is less than the amount of any fees required to be paid by that*
10 *institution pursuant to this article, the board may decrease the*
11 *fees applicable to that institution to an amount that is proportional*
12 *to the board's costs associated with that institution.*

13 *SEC. 8. Section 2798 of the Business and Professions Code is*
14 *amended to read:*

15 2798. (a) It is unlawful for anyone to conduct a school of
16 nursing unless the school has been approved as an accredited school
17 by the board.

18 ~~This~~

19 *(b) If the board has a reasonable belief, either by complaint or*
20 *otherwise, that a school is allowing students to apply for its nursing*
21 *program and that nursing program does not have the approval of*
22 *the board, the board shall immediately order the school to cease*
23 *and desist from offering students the ability to enroll in its nursing*
24 *program. The board shall also notify the Attorney General's office*
25 *that the school is offering students the ability to enroll in a nursing*
26 *program that does not have the approval of the board.*

27 *(c) It shall be unprofessional conduct for any registered nurse*
28 *to violate or attempt to violate, either directly or indirectly, or to*
29 *assist or abet the violation of, this section.*

30 *(d) This section is not applicable to schools conducted under*
31 *Section 2789 of this chapter.*

32 *SEC. 9. Section 16310 of the Government Code is amended to*
33 *read:*

34 16310. (a) When the General Fund in the Treasury is or will
35 be exhausted, the Controller shall notify the Governor and the
36 Pooled Money Investment Board. The Governor may order the
37 Controller to direct the transfer of all or any part of the moneys
38 not needed in other funds or accounts to the General Fund from
39 those funds or accounts, as determined by the Pooled Money
40 Investment Board, including the Surplus Money Investment Fund

1 or the Pooled Money Investment Account. All moneys so
2 transferred shall be returned to the funds or accounts from which
3 they were transferred as soon as there are sufficient moneys in the
4 General Fund to return them. No interest shall be charged or paid
5 on any transfer authorized by this section, exclusive of the Pooled
6 Money Investment Account, except as provided in this section.
7 This section does not authorize any transfer that will interfere with
8 the object for which a special fund was created or any transfer
9 from the *Board of Registered Nursing Fund*, Central Valley Water
10 Project Construction Fund, the Central Valley Water Project
11 Revenue Fund, or the California Water Resources Development
12 Bond Fund.

13 (b) (1) Interest shall be paid on all moneys transferred to the
14 General Fund from the following funds:

15 (A) The Department of Food and Agriculture Fund.

16 (B) The DNA Identification Fund.

17 (C) The Mental Health Services Fund.

18 (D) All funds created pursuant to the California Children and
19 Families Act of 1998, enacted by Proposition 10 at the November
20 3, 1998, statewide general election.

21 (E) Any funds retained by or in the possession of the California
22 Exposition and State Fair pursuant to this section.

23 (2) With respect to all other funds, and unless otherwise
24 specified, if the total moneys transferred to the General Fund in
25 any fiscal year from any special fund pursuant to this section
26 exceed an amount equal to 10 percent of the total additions to
27 surplus available for appropriation as shown in the statement of
28 operations of a prior fiscal year as set forth in the most recent
29 published annual report of the Controller, interest shall be paid on
30 the excess. Interest payable under this section shall be computed
31 at a rate determined by the Pooled Money Investment Board to be
32 the current earning rate of the fund from which transferred.

33 (c) Except as described in subdivision (d), all moneys in the
34 State Treasury may be loaned for the purposes described in
35 subdivision (a).

36 (d) Subdivision (c) shall not apply to any of the following:

37 (1) The Local Agency Investment Fund.

38 (2) Funds classified in the State of California Uniform Codes
39 Manual as bond funds or retirement funds.

1 (3) All or part of the moneys not needed in other funds or
2 accounts for purposes of subdivision (a) where the Controller is
3 prohibited by the California Constitution, bond indenture, or
4 statutory or case law from transferring all or any part of those
5 moneys.

6 *SEC. 10. Section 830.3 of the Penal Code is amended to read:*

7 830.3. The following persons are peace officers whose authority
8 extends to any place in the state for the purpose of performing
9 their primary duty or when making an arrest pursuant to Section
10 836 as to any public offense with respect to which there is
11 immediate danger to person or property, or of the escape of the
12 perpetrator of that offense, or pursuant to Section 8597 or 8598 of
13 the Government Code. These peace officers may carry firearms
14 only if authorized and under those terms and conditions as specified
15 by their employing agencies:

16 (a) Persons employed by the Division of Investigation of the
17 Department of Consumer Affairs and investigators of the Medical
18 Board of California ~~and~~, the Board of Dental Examiners, *and the*
19 *Board of Registered Nursing* who are designated by the Director
20 of Consumer Affairs, provided that the primary duty of these peace
21 officers shall be the enforcement of the law as that duty is set forth
22 in Section 160 of the Business and Professions Code.

23 (b) Voluntary fire wardens designated by the Director of
24 Forestry and Fire Protection pursuant to Section 4156 of the Public
25 Resources Code, provided that the primary duty of these peace
26 officers shall be the enforcement of the law as that duty is set forth
27 in Section 4156 of that code.

28 (c) Employees of the Department of Motor Vehicles designated
29 in Section 1655 of the Vehicle Code, provided that the primary
30 duty of these peace officers shall be the enforcement of the law as
31 that duty is set forth in Section 1655 of that code.

32 (d) Investigators of the California Horse Racing Board
33 designated by the board, provided that the primary duty of these
34 peace officers shall be the enforcement of Chapter 4 (commencing
35 with Section 19400) of Division 8 of the Business and Professions
36 Code and Chapter 10 (commencing with Section 330) of Title 9
37 of Part 1 of this code.

38 (e) The State Fire Marshal and assistant or deputy state fire
39 marshals appointed pursuant to Section 13103 of the Health and
40 Safety Code, provided that the primary duty of these peace officers

1 shall be the enforcement of the law as that duty is set forth in
2 Section 13104 of that code.

3 (f) Inspectors of the food and drug section designated by the
4 chief pursuant to subdivision (a) of Section 106500 of the Health
5 and Safety Code, provided that the primary duty of these peace
6 officers shall be the enforcement of the law as that duty is set forth
7 in Section 106500 of that code.

8 (g) All investigators of the Division of Labor Standards
9 Enforcement designated by the Labor Commissioner, provided
10 that the primary duty of these peace officers shall be the
11 enforcement of the law as prescribed in Section 95 of the Labor
12 Code.

13 (h) All investigators of the State Departments of Health Care
14 Services, Public Health, Social Services, Mental Health, and
15 Alcohol and Drug Programs, the Department of Toxic Substances
16 Control, the Office of Statewide Health Planning and Development,
17 and the Public Employees' Retirement System, provided that the
18 primary duty of these peace officers shall be the enforcement of
19 the law relating to the duties of his or her department or office.
20 Notwithstanding any other provision of law, investigators of the
21 Public Employees' Retirement System shall not carry firearms.

22 (i) The Chief of the Bureau of Fraudulent Claims of the
23 Department of Insurance and those investigators designated by the
24 chief, provided that the primary duty of those investigators shall
25 be the enforcement of Section 550.

26 (j) Employees of the Department of Housing and Community
27 Development designated under Section 18023 of the Health and
28 Safety Code, provided that the primary duty of these peace officers
29 shall be the enforcement of the law as that duty is set forth in
30 Section 18023 of that code.

31 (k) Investigators of the office of the Controller, provided that
32 the primary duty of these investigators shall be the enforcement
33 of the law relating to the duties of that office. Notwithstanding any
34 other law, except as authorized by the Controller, the peace officers
35 designated pursuant to this subdivision shall not carry firearms.

36 (l) Investigators of the Department of Corporations designated
37 by the Commissioner of Corporations, provided that the primary
38 duty of these investigators shall be the enforcement of the
39 provisions of law administered by the Department of Corporations.

1 Notwithstanding any other provision of law, the peace officers
2 designated pursuant to this subdivision shall not carry firearms.

3 (m) Persons employed by the Contractors State License Board
4 designated by the Director of Consumer Affairs pursuant to Section
5 7011.5 of the Business and Professions Code, provided that the
6 primary duty of these persons shall be the enforcement of the law
7 as that duty is set forth in Section 7011.5, and in Chapter 9
8 (commencing with Section 7000) of Division 3, of that code. The
9 Director of Consumer Affairs may designate as peace officers not
10 more than 12 persons who shall at the time of their designation be
11 assigned to the special investigations unit of the board.
12 Notwithstanding any other provision of law, the persons designated
13 pursuant to this subdivision shall not carry firearms.

14 (n) The Chief and coordinators of the Law Enforcement Branch
15 of the California Emergency Management Agency.

16 (o) Investigators of the office of the Secretary of State designated
17 by the Secretary of State, provided that the primary duty of these
18 peace officers shall be the enforcement of the law as prescribed
19 in Chapter 3 (commencing with Section 8200) of Division 1 of
20 Title 2 of, and Section 12172.5 of, the Government Code.
21 Notwithstanding any other provision of law, the peace officers
22 designated pursuant to this subdivision shall not carry firearms.

23 (p) The Deputy Director for Security designated by Section
24 8880.38 of the Government Code, and all lottery security personnel
25 assigned to the California State Lottery and designated by the
26 director, provided that the primary duty of any of those peace
27 officers shall be the enforcement of the laws related to assuring
28 the integrity, honesty, and fairness of the operation and
29 administration of the California State Lottery.

30 (q) Investigators employed by the Investigation Division of the
31 Employment Development Department designated by the director
32 of the department, provided that the primary duty of those peace
33 officers shall be the enforcement of the law as that duty is set forth
34 in Section 317 of the Unemployment Insurance Code.

35 Notwithstanding any other provision of law, the peace officers
36 designated pursuant to this subdivision shall not carry firearms.

37 (r) The chief and assistant chief of museum security and safety
38 of the California Science Center, as designated by the executive
39 director pursuant to Section 4108 of the Food and Agricultural
40 Code, provided that the primary duty of those peace officers shall

1 be the enforcement of the law as that duty is set forth in Section
2 4108 of the Food and Agricultural Code.

3 (s) Employees of the Franchise Tax Board designated by the
4 board, provided that the primary duty of these peace officers shall
5 be the enforcement of the law as set forth in Chapter 9
6 (commencing with Section 19701) of Part 10.2 of Division 2 of
7 the Revenue and Taxation Code.

8 (t) Notwithstanding any other provision of this section, a peace
9 officer authorized by this section shall not be authorized to carry
10 firearms by his or her employing agency until that agency has
11 adopted a policy on the use of deadly force by those peace officers,
12 and until those peace officers have been instructed in the employing
13 agency's policy on the use of deadly force.

14 Every peace officer authorized pursuant to this section to carry
15 firearms by his or her employing agency shall qualify in the use
16 of the firearms at least every six months.

17 (u) Investigators of the Department of Managed Health Care
18 designated by the Director of the Department of Managed Health
19 Care, provided that the primary duty of these investigators shall
20 be the enforcement of the provisions of laws administered by the
21 Director of the Department of Managed Health Care.
22 Notwithstanding any other provision of law, the peace officers
23 designated pursuant to this subdivision shall not carry firearms.

24 (v) The Chief, Deputy Chief, supervising investigators, and
25 investigators of the Office of Protective Services of the State
26 Department of Developmental Services, provided that the primary
27 duty of each of those persons shall be the enforcement of the law
28 relating to the duties of his or her department or office.

O