

AMENDED IN ASSEMBLY JUNE 20, 2011

AMENDED IN SENATE MAY 5, 2011

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 542

Introduced by Senator Price

February 17, 2011

~~An act to amend Sections 5000, 5015.6, 5076, 5076.1, 6510, and 6530 of, and to add Section 6582.2 to, the Business and Professions Code, relating to professions and vocations. An act to add Section 5012 to the Penal Code, relating to inmates.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as amended, Price. ~~Professions and vocations: regulatory boards. Inmates: tattoos.~~

Existing law provides that the Department of Corrections and Rehabilitation has jurisdiction over the health and health care of inmates.

This bill would require that inmates only receive, remove, or permit removal of tattoos from themselves or others if it is done in a manner sanctioned by the warden as specified. The bill would prohibit inmates from tattooing themselves or permitting themselves or others to be tattooed with gang-affiliated, racist, anti-Semitic, or similarly intolerant tattoos. The bill would also make related findings and declarations.

~~Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, including the California Board of Accountancy and the Professional Fiduciaries Bureau. Existing law authorizes the board to appoint an executive officer and authorizes the Governor to appoint the~~

chief of the bureau. Under existing law, these provisions are repealed on January 1, 2012. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of these provisions until January 1, 2016, except that the bill would extend the operation of provisions establishing the Professional Fiduciaries Bureau until January 1, 2015. The bill would specify that these boards would be subject to review by the appropriate policy committees of the Legislature.

With respect to accounting firms, existing law, until January 1, 2014, requires a firm, in order to renew its registration, to have a specified peer review report accepted by a board-recognized peer review group. Existing law, until January 1, 2014, requires the board to appoint a peer review oversight committee of certified public accountants to provide recommendations to the board relating to the effectiveness of mandatory peer review. Existing law also requires the board, by January 1, 2013, to provide the Legislature and the Governor with a report regarding specified peer review requirements.

This bill would extend the operation of the peer review report requirement and the peer review oversight committee to January 1, 2016, and would require the report to the Legislature and the Governor to be submitted by January 1, 2015.

With respect to professional fiduciaries, existing law prohibits a person from holding himself or herself out as a professional fiduciary without a license issued by the bureau. Existing law exempts from the license requirement a person enrolled as an agent to practice before the Internal Revenue Service, as specified. Under existing law, a license may be suspended, revoked, denied, or other disciplinary action may be imposed for various reasons.

This bill would revise the exemption requirement by additionally requiring that the enrolled agent provide only fiduciary services that are ancillary to the primary services of an enrolled agent and that those services be provided at the request of a client with which the enrolled agent has an existing professional relationship. The bill would authorize the bureau, instead of issuing an accusation or statement of issues against a licensee or applicant, to enter into a specified settlement with a licensee or applicant.

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. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Prisoner-initiated tattoos are widespread in the California*
4 *correctional system.*

5 *(b) According to the Centers for Disease Control (CDC), there*
6 *is an average of 1,240 inmates infected with HIV/AIDS in*
7 *California's prisons. The CDC estimates the cost to care for these*
8 *inmates at over eighteen million dollars (\$18,000,000).*

9 *(c) It is estimated that nearly 40 percent of the state's prison*
10 *population is infected with hepatitis C, according to a lawsuit filed*
11 *in 2008.*

12 *(d) Ninety percent of all prisoners are ultimately released from*
13 *state prison.*

14 *(e) The majority of inmates have sex within the first 24 hours*
15 *of their release from state prison.*

16 *(f) The average duration of incarceration in California prisons*
17 *is just over two years.*

18 *(g) Transmission of HIV and Hepatitis C in prison quickly affects*
19 *the general population.*

20 *(h) It is in the interests of protecting the public health to*
21 *acknowledge that tattooing occurs in prison and to take steps to*
22 *make prison tattoos safer and less prone to transmission of*
23 *blood-borne pathogens.*

24 *(i) Acknowledging the behavior that tattooing occurs in prison,*
25 *combined with appropriate supervision, will ultimately help to*
26 *mitigate dangerous conditions for correctional officers and public*
27 *health crises for the communities into which inmates are released.*

28 *SEC. 2. Section 5012 is added to the Penal Code, to read:*

29 *5012. (a) Inmates shall only receive, remove, or permit*
30 *removal of tattoos from themselves or others if it is done in a*
31 *manner sanctioned by the warden and in accordance with all the*
32 *following:*

33 *(1) In a supervised environment that the warden determines*
34 *does not compromise the safety of the inmate, other inmates, prison*
35 *personnel, or the public at large.*

36 *(2) If a qualified medical professional is present and provides*
37 *appropriate supervision.*

1 (3) *In accordance with the required health and safety standards*
2 *outlined in Sections 119308 and 119309 of the Health and Safety*
3 *Code.*

4 (b) *Inmates shall not tattoo themselves or permit themselves or*
5 *others to be tattooed with gang-affiliated, racist, anti-Semitic, or*
6 *similarly intolerant tattoos.*

7 ~~SECTION 1. Section 5000 of the Business and Professions~~
8 ~~Code is amended to read:~~

9 ~~5000. There is in the Department of Consumer Affairs the~~
10 ~~California Board of Accountancy, which consists of 15 members,~~
11 ~~seven of whom shall be licensees, and eight of whom shall be~~
12 ~~public members who shall not be licentiates of the board or~~
13 ~~registered by the board. The board has the powers and duties~~
14 ~~conferred by this chapter.~~

15 ~~The Governor shall appoint four of the public members, and the~~
16 ~~seven licensee members as provided in this section. The Senate~~
17 ~~Rules Committee and the Speaker of the Assembly shall each~~
18 ~~appoint two public members. In appointing the seven licensee~~
19 ~~members, the Governor shall appoint members representing a cross~~
20 ~~section of the accounting profession with at least two members~~
21 ~~representing a small public accounting firm. For the purposes of~~
22 ~~this chapter, a small public accounting firm shall be defined as a~~
23 ~~professional firm that employs a total of no more than four~~
24 ~~licensees as partners, owners, or full-time employees in the practice~~
25 ~~of public accountancy within the State of California.~~

26 ~~This section shall remain in effect only until January 1, 2016,~~
27 ~~and as of that date is repealed, unless a later enacted statute, that~~
28 ~~is enacted before January 1, 2016, deletes or extends that date.~~
29 ~~Notwithstanding any other provision of law, the repeal of this~~
30 ~~section renders the board subject to review by the appropriate~~
31 ~~policy committees of the Legislature. However, the review of the~~
32 ~~board shall be limited to reports or studies specified in this chapter~~
33 ~~and those issues identified by the appropriate policy committees~~
34 ~~of the Legislature and the board regarding the implementation of~~
35 ~~new licensing requirements.~~

36 ~~SEC. 2. Section 5015.6 of the Business and Professions Code~~
37 ~~is amended to read:~~

38 ~~5015.6. The board may appoint a person exempt from civil~~
39 ~~service who shall be designated as an executive officer and who~~

1 shall exercise the powers and perform the duties delegated by the
2 board and vested in him or her by this chapter.

3 This section shall remain in effect only until January 1, 2016,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2016, deletes or extends that date.

6 SEC. 3.— Section 5076 of the Business and Professions Code is
7 amended to read:

8 5076. (a) In order to renew its registration, a firm, as defined
9 in Section 5035.1, shall have a peer review report of its accounting
10 and auditing practice accepted by a board-recognized peer review
11 program no less frequently than every three years.

12 (b) For purposes of this article, the following definitions apply:

13 (1) “Peer review” means a study, appraisal, or review conducted
14 in accordance with professional standards of the professional work
15 of a firm, and may include an evaluation of other factors in
16 accordance with the requirements specified by the board in
17 regulations. The peer review report shall be issued by an individual
18 who has a valid and current license, certificate, or permit to practice
19 public accountancy from this state or another state and is
20 unaffiliated with the firm being reviewed.

21 (2) “Accounting and auditing practice” includes any services
22 that are performed using professional standards defined by the
23 board in regulations.

24 (c) The board shall adopt regulations as necessary to implement,
25 interpret, and make specific the peer review requirements in this
26 section, including, but not limited to, regulations specifying the
27 requirements for board recognition of a peer review program,
28 standards for administering a peer review, extensions of time for
29 fulfilling the peer review requirement, exclusions from the peer
30 review program, and document submission.

31 (d) The board shall adopt emergency regulations in accordance
32 with the Administrative Procedure Act (Chapter 3.5 (commencing
33 with Section 11340) of Part 1 of Division 3 of Title 2 of the
34 Government Code) to establish policies, guidelines, and procedures
35 as outlined in subdivision (c). The adoption of the regulations shall
36 be considered by the Office of Administrative Law to be necessary
37 for the immediate preservation of the public peace, health and
38 safety, or general welfare. The emergency regulations shall be
39 submitted to the Office of Administrative Law for filing with the
40 Secretary of State and publication in the California Code of

1 Regulations, and shall be replaced in accordance with the
2 Administrative Procedure Act.

3 (e) Nothing in this section shall prohibit the board from initiating
4 an investigation and imposing discipline against a firm or licensee,
5 either as the result of a complaint that alleges violations of statutes,
6 rules, or regulations, or from information contained in a peer review
7 report received by the board.

8 (f) A firm issued a substandard peer review report, as defined
9 by the board in regulation, shall submit a copy of that report to the
10 board. The board shall establish in regulation the time period that
11 a firm must submit the report to the board. This period shall not
12 exceed 60 days from the time the report is accepted by a
13 board-recognized peer review program provider to the date the
14 report is submitted to the board.

15 (g) (1) A board-recognized peer review program provider shall
16 file a copy with the board of all substandard peer review reports
17 issued to California-licensed firms. The board shall establish in
18 regulation the time period that a board-recognized peer review
19 program provider shall file the report with the board. This period
20 shall not exceed 60 days from the time the report is accepted by a
21 board-recognized peer review program provider to the date the
22 report is filed with the board. These reports may be filed with the
23 board electronically.

24 (2) Nothing in this subdivision shall require a board-recognized
25 peer review program provider, when administering peer reviews
26 in another state, to violate the laws of that state.

27 (h) The board shall, by January 1, 2010, define a substandard
28 peer review report in regulation.

29 (i) Any requirements imposed by a board-recognized peer review
30 program on a firm in conjunction with the completion of a peer
31 review shall be separate from, and in addition to, any action by
32 the board pursuant to this section.

33 (j) Any report of a substandard peer review submitted to the
34 board in conjunction with this section shall be collected for
35 investigatory purposes.

36 (k) Nothing in this section affects the discovery or admissibility
37 of evidence in a civil or criminal action.

38 (l) Nothing in this section requires any firm to become a member
39 of any professional organization.

1 ~~(m) A peer reviewer shall not disclose information concerning~~
2 ~~licensees or their clients obtained during a peer review, unless~~
3 ~~specifically authorized pursuant to this section, Section 5076.1, or~~
4 ~~regulations prescribed by the board.~~

5 ~~(n) (1) By January 1, 2015, the board shall provide the~~
6 ~~Legislature and Governor with a report regarding the peer review~~
7 ~~requirements of this section that includes, without limitation:~~

8 ~~(A) The extent to which mandatory peer review of small firms~~
9 ~~or sole practitioners that prepare nondisclosure compiled financial~~
10 ~~statements on an other comprehensive basis of accounting enhances~~
11 ~~consumer protection.~~

12 ~~(B) The impact of peer review required by this section on small~~
13 ~~firms and sole practitioners that prepare nondisclosure compiled~~
14 ~~financial statements on an other comprehensive basis of accounting.~~

15 ~~(C) The impact of peer review required by this section on small~~
16 ~~businesses, nonprofit corporations, and other entities that utilize~~
17 ~~small firms or sole practitioners for the purposes of nondisclosure~~
18 ~~compiled financial statements prepared on an other comprehensive~~
19 ~~basis of accounting.~~

20 ~~(2) A report to the Legislature pursuant to this section shall be~~
21 ~~submitted in compliance with Section 9795 of the Government~~
22 ~~Code.~~

23 ~~(o) This section shall remain in effect only until January 1, 2016,~~
24 ~~and as of that date is repealed, unless a later enacted statute, that~~
25 ~~is enacted before January 1, 2016, deletes or extends that date.~~

26 ~~SEC. 4. Section 5076.1 of the Business and Professions Code~~
27 ~~is amended to read:~~

28 ~~5076.1. (a) The board shall appoint a peer review oversight~~
29 ~~committee of certified public accountants of this state who maintain~~
30 ~~a license in good standing and who are authorized to practice public~~
31 ~~accountancy to provide recommendations to the board on any~~
32 ~~matter upon which it is authorized to act to ensure the effectiveness~~
33 ~~of mandatory peer review.~~

34 ~~(b) The committee may request any information from a~~
35 ~~board-recognized peer review program provider deemed necessary~~
36 ~~to ensure the provider is administering peer reviews in accordance~~
37 ~~with the standards adopted by the board in regulations. Failure of~~
38 ~~a board-recognized peer review program provider to respond to~~
39 ~~the committee shall result in referral by the committee of the~~
40 ~~provider to the board for further action. Any information obtained~~

1 by the board, its representatives, or the peer review oversight
2 committee in conjunction with its review of peer review program
3 providers shall not be a public record, and shall be exempt from
4 public disclosure, provided, however, this information may be
5 disclosed under any of the following circumstances:

- 6 (1) ~~In connection with disciplinary proceedings of the board.~~
- 7 (2) ~~In connection with legal proceedings in which the board is~~
8 ~~a party.~~
- 9 (3) ~~In response to an official inquiry by a federal or state~~
10 ~~governmental regulatory agency.~~
- 11 (4) ~~In compliance with a subpoena or summons enforceable by~~
12 ~~court order.~~
- 13 (5) ~~As otherwise specifically required by law.~~

14 (e) ~~The members of the committee shall be appointed to~~
15 ~~two-year terms and may serve a maximum of four consecutive~~
16 ~~terms.~~

17 (d) ~~The board may adopt, as necessary, regulations further~~
18 ~~defining the minimum qualifications for appointment as a~~
19 ~~committee member and additional administrative elements designed~~
20 ~~to ensure the effectiveness of mandatory peer review.~~

21 (e) ~~This section shall remain in effect only until January 1, 2016,~~
22 ~~and as of that date is repealed, unless a later enacted statute, that~~
23 ~~is enacted before January 1, 2016, deletes or extends that date.~~

24 ~~SEC. 5.—Section 6510 of the Business and Professions Code is~~
25 ~~amended to read:~~

26 ~~6510.—(a) There is within the jurisdiction of the department~~
27 ~~the Professional Fiduciaries Bureau. The bureau is under the~~
28 ~~supervision and control of the director. The duty of enforcing and~~
29 ~~administering this chapter is vested in the chief of the bureau, who~~
30 ~~is responsible to the director. Every power granted or duty imposed~~
31 ~~upon the director under this chapter may be exercised or performed~~
32 ~~in the name of the director by a deputy director or by the chief,~~
33 ~~subject to conditions and limitations as the director may prescribe.~~

34 (b) ~~The Governor shall appoint, subject to confirmation by the~~
35 ~~Senate, the chief of the bureau, at a salary to be fixed and~~
36 ~~determined by the director with the approval of the Director of~~
37 ~~Finance. The chief shall serve under the direction and supervision~~
38 ~~of the director and at the pleasure of the Governor.~~

39 (e) ~~This section shall remain in effect only until January 1, 2015,~~
40 ~~and as of that date is repealed, unless a later enacted statute, that~~

1 is enacted before January 1, 2015, deletes or extends that date.
2 Notwithstanding any other provision of law, the repeal of this
3 section renders the board subject to review by the appropriate
4 policy committees of the Legislature.

5 Notwithstanding any other provision of law, upon the repeal of
6 this section, the responsibilities and jurisdiction of the bureau shall
7 be transferred to the Professional Fiduciaries Advisory Committee,
8 as provided by Section 6511.

9 SEC. 6. Section 6530 of the Business and Professions Code is
10 amended to read:

11 6530. (a) On and after January 1, 2009, no person shall act or
12 hold himself or herself out to the public as a professional fiduciary
13 unless that person is licensed as a professional fiduciary in
14 accordance with the provisions of this chapter.

15 (b) This section does not apply to a person licensed as an
16 attorney under the State Bar Act (Chapter 4 (commencing with
17 Section 6000)).

18 (c) This section does not apply to a person licensed as, and
19 acting within the scope of practice of, a certified public accountant
20 pursuant to Chapter 1 (commencing with Section 5000) of Division
21 3.

22 (d) This section does not apply to a person enrolled as an agent
23 to practice before the Internal Revenue Service pursuant to Part
24 10 of Title 31 of the Code of Federal Regulations, who is providing
25 fiduciary services that are ancillary to the primary services of an
26 enrolled agent, and those services are provided at the request of a
27 client with which the enrolled agent has an existing professional
28 relationship. However, an enrolled agent who solicits clients for
29 fiduciary services or holds himself or herself out as a professional
30 fiduciary shall hold a license in accordance with this chapter.

31 SEC. 7. Section 6582.2 is added to the Business and Professions
32 Code, to read:

33 6582.2. (a) Notwithstanding Section 6582 and Section
34 11415.60 of the Government Code, the bureau may enter into a
35 settlement with a licensee or applicant instead of the issuance of
36 an accusation or statement of issues against that licensee or
37 applicant.

38 (b) The settlement shall identify the factual basis for the action
39 being taken and the statutes or regulations violated.

1 ~~(e) A person who enters a settlement pursuant to this section is~~
2 ~~not precluded from filing a petition, in the timeframe permitted~~
3 ~~by Section 11522 of the Government Code, to modify the terms~~
4 ~~of the settlement or a petition for early termination of probation,~~
5 ~~if probation is part of the settlement.~~
6 ~~(d) Any settlement with a licensee executed pursuant to this~~
7 ~~section shall be considered discipline and a public record and shall~~
8 ~~be posted on the bureau's Internet Web site. Any settlement with~~
9 ~~an applicant executed pursuant to this section shall be considered~~
10 ~~a public record and shall be posted on the bureau's Internet Web~~
11 ~~site.~~