

AMENDED IN ASSEMBLY MAY 24, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2588**

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**Introduced by Assembly Member Morrow**

February 21, 1996

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An act to amend ~~Section 655.5~~ *Sections 655.5 and 17206* of the Business and Professions Code, relating to clinical laboratory services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2588, as amended, Morrow. Clinical laboratory services.

Under existing law, the practices of chiropractic, clinical laboratory technology, dentistry, medicine, research psychoanalysis, speech pathology and audiology, optometry, occupational therapy, dietetics, physical therapy, nursing, vocational nursing, psychology, hearing aid dispensing, physician assisting, osteopathy, respiratory therapy, nursing home administration, pharmacy, psychiatric technology, veterinary medicine, acupuncture, marriage, family and child counseling, and social work are subject to licensure and regulation by the state.

Existing law prohibits any person licensed for one of those practices to charge, bill, or otherwise solicit payment from any patient, client, or customer, for any clinical laboratory service if the service was not actually rendered by that person or under his or her direct supervision, unless the patient, client, or customer is apprised at the first, and any subsequent,

solicitation for payment of the name, address, and charges of the clinical laboratory performing the service.

~~Existing law makes it unlawful for any person licensed for one of those practices to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge, bill, or other solicitation of payment.~~

~~This bill would exempt from those requirements a charge by a person for a clinical laboratory service that is less than the charge would have been if a clinical laboratory billed a patient, client, or customer directly for the clinical laboratory service.~~

The bill would provide that the requirement for disclosure would be satisfied if the *first such written charge, bill, or other solicitation of payment is directed to a 3rd-party payor of the patient, client, or customer, and if the required disclosure is made to a 3rd-party payer of the patient, client, or customer.*

*Existing law imposes a civil penalty for any person who engages, has engaged, or proposes to engage in unfair competition.*

*This bill would provide that this civil penalty shall not apply to a violation of the above-described provisions governing clinical laboratory services if the charge for a clinical laboratory service is less than the charge would have been if a clinical laboratory billed the patient, client, or customer directly for the service, except under certain prescribed circumstances where the person had prior written notice of his or her previous violation of the provisions governing clinical laboratory services.*

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

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

- 1 SECTION 1. Section 655.5 of the Business and
- 2 Professions Code is amended to read:
- 3 655.5. (a) It is unlawful for any person licensed under
- 4 this division or under any initiative act referred to in this
- 5 division, or any clinical laboratory, or any health facility
- 6 when billing for a clinical laboratory of the facility, to



1 charge, bill, or otherwise solicit payment from any  
2 patient, client, or customer for any clinical laboratory  
3 service not actually rendered by such person or clinical  
4 laboratory or under his or her or its direct supervision  
5 unless the patient, client, or customer is apprised at the  
6 first time of the charge, billing, or solicitation of the name,  
7 address, and charges of the clinical laboratory performing  
8 the service. The first such written charge, bill, or other  
9 solicitation of payment shall separately set forth the  
10 name, address, and charges of the clinical laboratory  
11 concerned and shall clearly show whether or not such  
12 charge is included in the total of the account, bill, or  
13 charge. ~~This~~ *If the first such written charge, bill, or other*  
14 *solicitation of payment is directed to a third-party payor*  
15 *of the patient, client, or customer, this* subdivision shall be  
16 satisfied if any disclosure required by this subdivision is  
17 made not to the patient, client, or customer but to a  
18 third-party payer of the patient, client, or customer. This  
19 subdivision shall not apply to a clinical laboratory of a  
20 health facility or a health facility when billing for a clinical  
21 laboratory of the facility nor to a person licensed under  
22 this division or under any initiative act referred to in this  
23 division if the standardized billing form used by the  
24 facility or person requires a summary entry for all clinical  
25 laboratory charges. For purposes of this subdivision,  
26 “health facility” has the same meaning as defined in  
27 Section 1250 of the Health and Safety Code.

28 (b) Commencing July 1, 1994, a clinical laboratory  
29 shall provide to each of its referring providers, upon  
30 request, a schedule of fees for services provided to  
31 patients of the referring provider. The schedule shall be  
32 provided within two working days after the clinical  
33 laboratory receives the request. For the purposes of this  
34 subdivision, a “referring provider” means any provider  
35 who has referred a patient to the clinical laboratory in the  
36 preceding six-month period. Commencing July 1, 1994, a  
37 clinical laboratory that provides a list of laboratory  
38 services to a referring provider or to a potential referring  
39 provider shall include a schedule of fees for the laboratory  
40 services listed.



1 (c) It is also unlawful for any person licensed under  
2 this division or under any initiative act referred to in this  
3 division to charge additional charges for any clinical  
4 laboratory service that is not actually rendered by the  
5 licensee to the patient and itemized in the charge, bill, or  
6 other solicitation of payment. This section shall not be  
7 construed to prohibit any of the following:

8 (1) Any itemized charge for any service actually  
9 rendered to the patient by the licensee.

10 (2) Any summary charge for services actually  
11 rendered to a patient by a health facility, as defined in  
12 Section 1250 of the Health and Safety Code, or by a person  
13 licensed under this division or under any initiative act  
14 referred to in this division if the standardized billing form  
15 used by the facility or person requires a summary entry  
16 for all clinical laboratory charges.

17 (d) This section shall not apply to any person or clinical  
18 laboratory who or which contracts directly with a health  
19 care service plan licensed pursuant to Section 1349 of the  
20 Health and Safety Code, if such services are to be  
21 provided to members of the plan on a prepaid basis and  
22 without additional charge or liability on account thereof.

23 ~~(e) This section shall not apply to a charge by a person  
24 for a clinical laboratory service that is less than the charge  
25 would have been if a clinical laboratory billed a patient,  
26 client, or customer directly for the clinical laboratory  
27 service.~~

28 ~~(f)~~

29 (e) A violation of this section is a public offense and is  
30 punishable upon a first conviction by imprisonment in  
31 the county jail for not more than one year, or by  
32 imprisonment in the state prison, or by a fine not  
33 exceeding ten thousand dollars (\$10,000), or by both such  
34 imprisonment and fine. A second or subsequent  
35 conviction is punishable by imprisonment in the state  
36 prison.

37 *SEC. 2. Section 17206 of the Business and Professions*  
38 *Code is amended to read:*

39 17206. (a) Any person who engages, has engaged, or  
40 proposes to engage in unfair competition shall be liable



1 for a civil penalty not to exceed two thousand five  
2 hundred dollars (\$2,500) for each violation, which shall be  
3 assessed and recovered in a civil action brought in the  
4 name of the people of the State of California by the  
5 Attorney General or by any district attorney or by any  
6 county counsel authorized by agreement with the district  
7 attorney in actions involving violation of a county  
8 ordinance, or any city attorney of a city, or city and  
9 county, having a population in excess of 750,000, and, with  
10 the consent of the district attorney, by a city prosecutor  
11 in any city having a full-time city prosecutor or, with the  
12 consent of the district attorney, by a city attorney in any  
13 city and county, in any court of competent jurisdiction.

14 (b) The court shall impose a civil penalty for each  
15 violation of this chapter. In assessing the amount of the  
16 civil penalty, the court shall consider any one or more of  
17 the relevant circumstances presented by any of the  
18 parties to the case, including, but not limited to, the  
19 following: the nature and seriousness of the misconduct,  
20 the number of violations, the persistence of the  
21 misconduct, the length of time over which the  
22 misconduct occurred, the willfulness of the defendant's  
23 misconduct, and the defendant's assets, liabilities, and net  
24 worth.

25 (c) If the action is brought by the Attorney General,  
26 one-half of the penalty collected shall be paid to the  
27 treasurer of the county in which the judgment was  
28 entered, and one-half to the State General Fund. If  
29 brought by a district attorney or county counsel, the  
30 penalty collected shall be paid to the treasurer of the  
31 county in which the judgment was entered. Except as  
32 provided in subdivision (d), if brought by a city attorney  
33 or city prosecutor, one-half of the penalty collected shall  
34 be paid to the treasurer of the city in which the judgment  
35 was entered, and one-half to the treasurer of the county  
36 in which the judgment was entered.

37 (d) If the action is brought at the request of a board  
38 within the Department of Consumer Affairs or a local  
39 consumer affairs agency, the court shall determine the



1 reasonable expenses incurred by the board or local  
2 agency in the investigation and prosecution of the action.

3 Before any penalty collected is paid out pursuant to  
4 subdivision (b), the amount of such reasonable expenses  
5 incurred by the board shall be paid to the State Treasurer  
6 for deposit in the special fund of the board described in  
7 Section 205. If the board has no such special fund, the  
8 moneys shall be paid to the State Treasurer. The amount  
9 of such reasonable expenses incurred by a local consumer  
10 affairs agency shall be paid to the general fund of the  
11 municipality or county which funds the local agency.

12 (e) If the action is brought by a city attorney of a city  
13 and county, the entire amount of the penalty collected  
14 shall be paid to the treasurer of the city and county in  
15 which the judgment was entered. However, if the action  
16 is brought by a city attorney of a city and county for the  
17 purposes of civil enforcement pursuant to Section 17980  
18 of the Health and Safety Code or Article 3 (commencing  
19 with Section 11570) of Chapter 10 of Division 10 of the  
20 Health and Safety Code, either the penalty collected shall  
21 be paid entirely to the treasurer of the city and county in  
22 which the judgment was entered, or upon the request of  
23 the city attorney, the court may order that up to one-half  
24 of the penalty, under court supervision and approval, be  
25 paid for the purpose of restoring, maintaining, or  
26 enhancing the premises which were the subject of the  
27 action, and that the balance of the penalty be paid to the  
28 treasurer of the city and county.

29 (f) *Except as provided in subdivision (g), subdivision*  
30 *(a) shall not apply to a violation of Section 655.5 if the*  
31 *charge for a clinical laboratory service is less than the*  
32 *charge would have been if a clinical laboratory billed the*  
33 *patient, client, or customer directly for the clinical*  
34 *laboratory service.*

35 (g) *Subdivision (f) shall not apply if the agency*  
36 *bringing the action proves by a preponderance of the*  
37 *evidence that the person charged, prior to the alleged*  
38 *violation that is the subject of the action, received written*  
39 *notice from an agency authorized to bring an action*



1 *pursuant to subdivision (a) that the person charged had*  
2 *previously violated Section 655.5.*

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