

AMENDED IN SENATE MAY 17, 2011
AMENDED IN SENATE MAY 10, 2011
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 160, 2701, 2708, 2786, and 2798 of, and to add Sections 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 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 *delete the provisions requiring an agreement and would instead subject provide that* a school of nursing that is not an institution of higher education or *that is* affiliated with an institution of higher education, *and that is subject* to the requirements set forth in the California Private Postsecondary Education Act of 2009, ~~and requires board approval to grant nursing degrees.~~ *The bill* would subject all ~~approved institutions of higher education and those nursing 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: 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, designated investigators of the Division
4 of Investigation of the department, designated investigators of the
5 Medical Board of California, designated investigators of the Dental
6 Board of California, and designated investigators of the Board of
7 Registered Nursing have the authority of peace officers while
8 engaged in exercising the powers granted or performing the duties
9 imposed upon them or the division in investigating the laws
10 administered by the various boards comprising the department or
11 commencing directly or indirectly any criminal prosecution arising
12 from any investigation conducted under these laws. All persons
13 herein referred to shall be deemed to be acting within the scope
14 of employment with respect to all acts and matters set forth in this
15 section.

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

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

22 2701. (a) There is in the Department of Consumer Affairs the
23 Board of Registered Nursing consisting of nine members.

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

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

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

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

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

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

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

SEC. 4. Section 2786 of the Business and Professions Code is amended to read:

2786. (a) An approved school of nursing is one that has been approved by the board, gives the course of instruction approved by the board, covering not less than two academic years, is affiliated or conducted in connection with one or more hospitals, and is an institution of higher education ~~or is affiliated with an institution of higher education~~. For purposes of this section, “institution of higher education” includes, but is not limited to, community colleges offering an associate of arts or associate of science degree, and private postsecondary institutions offering an associate of arts, associate of science, or baccalaureate degree *and not subject to the California Private Postsecondary Education Act of 2009 (Chapter 8 (commencing with Section 94800) of Part 59 of Division 10 of Title 3 of the Education Code)*.

(b) A school of nursing that is not an institution of higher education or *that is* affiliated with an institution of higher education

1 *as required by the board, and that* is subject to the *California*
 2 Private Postsecondary Education Act of 2009, Chapter 8
 3 (commencing with Section 94800) of Part 59 of Division 10 of
 4 Title 3 of the Education Code, shall be approved by the board to
 5 grant an associate of arts or associate of science degree to
 6 individuals who graduate from the school of nursing or to grant a
 7 baccalaureate degree in nursing with successful completion of an
 8 additional course of study as approved by the board and the
 9 institution involved.

10 (c) The board shall determine by regulation the required subjects
 11 of instruction to be completed in an approved school of nursing
 12 for licensure as a registered nurse and shall include the minimum
 13 units of theory and clinical experience necessary to achieve
 14 essential clinical competency at the entry level of the registered
 15 nurse. The board's standards shall be designed to ~~encourage~~ *require*
 16 all schools to provide clinical instruction in all phases of the
 17 educational process.

18 (d) The board shall perform or cause to be performed an analysis
 19 of the practice of the registered nurse no less than every five years.
 20 Results of the analysis shall be utilized to assist in the
 21 determination of the required subjects of instruction, validation of
 22 the licensing examination, and assessment of the current practice
 23 of nursing.

24 SEC. 5. Section 2786.2 is added to the Business and Professions
 25 Code, to read:

26 2786.2. All private postsecondary schools of nursing approved
 27 by the board pursuant to subdivision (b) of Section 2786 shall
 28 comply with Article 8 (commencing with Section 94897) to Article
 29 16 (commencing with Section 94928), inclusive, of, and shall be
 30 subject to Article 18 (commencing with Section 94932) of, Chapter
 31 8 of Part 59 of Division 10 of Title 3 of the Education Code. The
 32 board shall *have a memorandum of understanding with the Bureau*
 33 *for Postsecondary Education* to ensure compliance with these
 34 provisions ~~and shall be responsible for, including~~ the handling of
 35 student complaints regarding these approved schools of nursing.

36 SEC. 6. Section 2786.5 is added to the Business and Professions
 37 Code, to read:

38 2786.5. (a) An institution of higher education or a private
 39 postsecondary school of nursing approved by the board pursuant
 40 to subdivision (b) of Section 2786 shall remit to the board for

1 deposit in the Board of Registered Nursing Fund the following
2 fees, in accordance with the following schedule:

3 (1) ~~Application fee for an approval to operate: The fee for~~
4 ~~approval of a school of nursing shall be~~ five thousand dollars
5 (\$5,000).

6 (2) ~~Renewal fee for the institution: The fee for continuing~~
7 ~~approval of a new nursing program shall be~~ three thousand five
8 hundred dollars (\$3,500).

9 (3) ~~Processing: The processing fee for authorization of a~~
10 ~~substantive change to an approval to operate: of a school of nursing~~
11 ~~shall be~~ five hundred dollars (\$500).

12 (b) In addition to any fees paid to the board pursuant to
13 paragraphs (1) to (3), inclusive, each school that is approved to
14 operate pursuant to subdivision (b) of Section 2786 shall remit an
15 annual institutional fee to the Bureau for Private Postsecondary
16 Education, in an amount equal to three-quarters of 1 percent of the
17 school's annual revenues derived from students in California, but
18 not exceeding a total of twenty-five thousand dollars (\$25,000)
19 annually, to be deposited in the Private Postsecondary and
20 Vocational Education Administration Fund.

21 (c) If the board determines that the annual cost of providing
22 oversight and review of ~~an institution~~ *a school of nursing*, as
23 required by this article, is less than the amount of any fees required
24 to be paid by that institution pursuant to this article, the board may
25 decrease the fees applicable to that institution to an amount that
26 is proportional to the board's costs associated with that institution.

27 SEC. 7. Section 2798 of the Business and Professions Code is
28 amended to read:

29 2798. (a) It is unlawful for anyone to conduct a school of
30 nursing unless the school has been approved by the board.

31 (b) If the board has a reasonable belief, either by complaint or
32 otherwise, that a school is allowing students to apply for its nursing
33 program and that nursing program does not have the approval of
34 the board, the board shall immediately order the school to cease
35 and desist from offering students the ability to enroll in its nursing
36 program. The board shall also notify the Attorney General's office
37 that the school is offering students the ability to enroll in a nursing
38 program that does not have the approval of the board.

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

4 (d) This section is not applicable to schools conducted under
5 Section 2789 of this chapter.

6 SEC. 8. Section 16310 of the Government Code is amended
7 to read:

8 16310. (a) When the General Fund in the Treasury is or will
9 be exhausted, the Controller shall notify the Governor and the
10 Pooled Money Investment Board. The Governor may order the
11 Controller to direct the transfer of all or any part of the moneys
12 not needed in other funds or accounts to the General Fund from
13 those funds or accounts, as determined by the Pooled Money
14 Investment Board, including the Surplus Money Investment Fund
15 or the Pooled Money Investment Account. All moneys so
16 transferred shall be returned to the funds or accounts from which
17 they were transferred as soon as there are sufficient moneys in the
18 General Fund to return them. No interest shall be charged or paid
19 on any transfer authorized by this section, exclusive of the Pooled
20 Money Investment Account, except as provided in this section.
21 This section does not authorize any transfer that will interfere with
22 the object for which a special fund was created or any transfer
23 from the Board of Registered Nursing Fund, Central Valley Water
24 Project Construction Fund, the Central Valley Water Project
25 Revenue Fund, or the California Water Resources Development
26 Bond Fund.

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

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

30 (B) The DNA Identification Fund.

31 (C) The Mental Health Services Fund.

32 (D) All funds created pursuant to the California Children and
33 Families Act of 1998, enacted by Proposition 10 at the November
34 3, 1998, statewide general election.

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

37 (2) With respect to all other funds, and unless otherwise
38 specified, if the total moneys transferred to the General Fund in
39 any fiscal year from any special fund pursuant to this section
40 exceed an amount equal to 10 percent of the total additions to

1 surplus available for appropriation as shown in the statement of
2 operations of a prior fiscal year as set forth in the most recent
3 published annual report of the Controller, interest shall be paid on
4 the excess. Interest payable under this section shall be computed
5 at a rate determined by the Pooled Money Investment Board to be
6 the current earning rate of the fund from which transferred.

7 (c) Except as described in subdivision (d), all moneys in the
8 State Treasury may be loaned for the purposes described in
9 subdivision (a).

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

11 (1) The Local Agency Investment Fund.

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

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

19 SEC. 9. Section 830.3 of the Penal Code is amended to read:

20 830.3. The following persons are peace officers whose authority
21 extends to any place in the state for the purpose of performing
22 their primary duty or when making an arrest pursuant to Section
23 836 as to any public offense with respect to which there is
24 immediate danger to person or property, or of the escape of the
25 perpetrator of that offense, or pursuant to Section 8597 or 8598 of
26 the Government Code. These peace officers may carry firearms
27 only if authorized and under those terms and conditions as specified
28 by their employing agencies:

29 (a) Persons employed by the Division of Investigation of the
30 Department of Consumer Affairs and investigators of the Medical
31 Board of California, the Board of Dental Examiners, and the Board
32 of Registered Nursing who are designated by the Director of
33 Consumer Affairs, provided that the primary duty of these peace
34 officers shall be the enforcement of the law as that duty is set forth
35 in Section 160 of the Business and Professions Code.

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

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

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

11 (e) The State Fire Marshal and assistant or deputy state fire
12 marshals appointed pursuant to Section 13103 of the Health and
13 Safety Code, provided that the primary duty of these peace officers
14 shall be the enforcement of the law as that duty is set forth in
15 Section 13104 of that code.

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

21 (g) All investigators of the Division of Labor Standards
22 Enforcement designated by the Labor Commissioner, provided
23 that the primary duty of these peace officers shall be the
24 enforcement of the law as prescribed in Section 95 of the Labor
25 Code.

26 (h) All investigators of the State Departments of Health Care
27 Services, Public Health, Social Services, Mental Health, and
28 Alcohol and Drug Programs, the Department of Toxic Substances
29 Control, the Office of Statewide Health Planning and Development,
30 and the Public Employees' Retirement System, provided that the
31 primary duty of these peace officers shall be the enforcement of
32 the law relating to the duties of his or her department or office.
33 Notwithstanding any other provision of law, investigators of the
34 Public Employees' Retirement System shall not carry firearms.

35 (i) The Chief of the Bureau of Fraudulent Claims of the
36 Department of Insurance and those investigators designated by the
37 chief, provided that the primary duty of those investigators shall
38 be the enforcement of Section 550.

39 (j) Employees of the Department of Housing and Community
40 Development designated under Section 18023 of the Health and

1 Safety Code, provided that the primary duty of these peace officers
2 shall be the enforcement of the law as that duty is set forth in
3 Section 18023 of that code.

4 (k) Investigators of the office of the Controller, provided that
5 the primary duty of these investigators shall be the enforcement
6 of the law relating to the duties of that office. Notwithstanding any
7 other law, except as authorized by the Controller, the peace officers
8 designated pursuant to this subdivision shall not carry firearms.

9 (l) Investigators of the Department of Corporations designated
10 by the Commissioner of Corporations, provided that the primary
11 duty of these investigators shall be the enforcement of the
12 provisions of law administered by the Department of Corporations.
13 Notwithstanding any other provision of law, the peace officers
14 designated pursuant to this subdivision shall not carry firearms.

15 (m) Persons employed by the ~~Contractors~~ *Contractors'* State
16 License Board designated by the Director of Consumer Affairs
17 pursuant to Section 7011.5 of the Business and Professions Code,
18 provided that the primary duty of these persons shall be the
19 enforcement of the law as that duty is set forth in Section 7011.5,
20 and in Chapter 9 (commencing with Section 7000) of Division 3,
21 of that code. The Director of Consumer Affairs may designate as
22 peace officers not more than 12 persons who shall at the time of
23 their designation be assigned to the special investigations unit of
24 the board. Notwithstanding any other provision of law, the persons
25 designated pursuant to this subdivision shall not carry firearms.

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

28 (o) Investigators of the office of the Secretary of State designated
29 by the Secretary of State, provided that the primary duty of these
30 peace officers shall be the enforcement of the law as prescribed
31 in Chapter 3 (commencing with Section 8200) of Division 1 of
32 Title 2 of, and Section 12172.5 of, the Government Code.
33 Notwithstanding any other provision of law, the peace officers
34 designated pursuant to this subdivision shall not carry firearms.

35 (p) The Deputy Director for Security designated by Section
36 8880.38 of the Government Code, and all lottery security personnel
37 assigned to the California State Lottery and designated by the
38 director, provided that the primary duty of any of those peace
39 officers shall be the enforcement of the laws related to assuring

1 the integrity, honesty, and fairness of the operation and
2 administration of the California State Lottery.

3 (q) Investigators employed by the Investigation Division of the
4 Employment Development Department designated by the director
5 of the department, provided that the primary duty of those peace
6 officers shall be the enforcement of the law as that duty is set forth
7 in Section 317 of the Unemployment Insurance Code.

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

10 (r) The chief and assistant chief of museum security and safety
11 of the California Science Center, as designated by the executive
12 director pursuant to Section 4108 of the Food and Agricultural
13 Code, provided that the primary duty of those peace officers shall
14 be the enforcement of the law as that duty is set forth in Section
15 4108 of the Food and Agricultural Code.

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

21 (t) Notwithstanding any other provision of this section, a peace
22 officer authorized by this section shall not be authorized to carry
23 firearms by his or her employing agency until that agency has
24 adopted a policy on the use of deadly force by those peace officers,
25 and until those peace officers have been instructed in the employing
26 agency's policy on the use of deadly force.

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

30 (u) Investigators of the Department of Managed Health Care
31 designated by the Director of the Department of Managed Health
32 Care, provided that the primary duty of these investigators shall
33 be the enforcement of the provisions of laws administered by the
34 Director of the Department of Managed Health Care.
35 Notwithstanding any other provision of law, the peace officers
36 designated pursuant to this subdivision shall not carry firearms.

37 (v) The Chief, Deputy Chief, supervising investigators, and
38 investigators of the Office of Protective Services of the State
39 Department of Developmental Services, provided that the primary

- 1 duty of each of those persons shall be the enforcement of the law
- 2 relating to the duties of his or her department or office.

O