

AMENDED IN SENATE MAY 31, 2011
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 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, requires board approval to grant nursing degrees. The bill would subject all 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:

1 2701. (a) There is in the Department of Consumer Affairs the
2 Board of Registered Nursing consisting of nine members.

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

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9 and as of that date is repealed, unless a later enacted statute, that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

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

16 2708. (a) The board shall appoint an executive officer who
17 shall perform the duties delegated by the board and who shall be
18 responsible to it for the accomplishment of those duties.

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

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

23 (d) 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 2786 of the Business and Professions Code is
27 amended to read:

28 2786. (a) An approved school of nursing is one that has been
29 approved by the board, gives the course of instruction approved
30 by the board, covering not less than two academic years, is
31 affiliated or conducted in connection with one or more hospitals,
32 and is an institution of higher education. For purposes of this
33 section, "institution of higher education" includes, but is not limited
34 to, community colleges offering an associate of arts or associate
35 of science degree, and private postsecondary institutions offering
36 an associate of arts, associate of science, or baccalaureate degree
37 and not subject to the California Private Postsecondary Education
38 Act of 2009 (Chapter 8 (commencing with Section 94800) of Part
39 59 of Division 10 of Title 3 of the Education Code).

1 (b) A school of nursing that is not an institution of higher
2 education or that is affiliated with an institution of higher education
3 as required by the board, and that is subject to the California Private
4 Postsecondary Education Act of 2009, Chapter 8 (commencing
5 with Section 94800) of Part 59 of Division 10 of Title 3 of the
6 Education Code, shall be approved by the board to grant an
7 associate of arts or associate of science degree to individuals who
8 graduate from the school of nursing or to grant a baccalaureate
9 degree in nursing with successful completion of an additional
10 course of study as approved by the board and the institution
11 involved.

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

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

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

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

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

1 2786.5. (a) An institution of higher education or a private
2 postsecondary school of nursing approved by the board pursuant
3 to subdivision (b) of Section 2786 shall remit to the board for
4 deposit in the Board of Registered Nursing Fund the following
5 fees, in accordance with the following schedule:

6 (1) The fee for approval of a school of nursing shall be five
7 thousand dollars (\$5,000).

8 (2) The fee for continuing approval of a new nursing program
9 shall be three thousand five hundred dollars (\$3,500).

10 (3) The processing fee for authorization of a substantive change
11 to an approval of a school of nursing shall be five hundred dollars
12 (\$500).

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

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

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

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

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

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

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

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

~~16310. (a) When the General Fund in the Treasury is or will be exhausted, the Controller shall notify the Governor and the Pooled Money Investment Board. The Governor may 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, as determined by the Pooled Money Investment Board, including the Surplus Money Investment Fund or the Pooled Money Investment Account. 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. No interest shall be charged or paid on any transfer authorized by this section, exclusive of the Pooled Money Investment Account, except as provided in this section. This section does not authorize any transfer that will interfere with the object for which a special fund was created or any transfer from the Board of Registered Nursing Fund, Central Valley Water Project Construction Fund, the Central Valley Water Project Revenue Fund, or the California Water Resources Development Bond Fund.~~

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

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

~~(B) The DNA Identification Fund.~~

~~(C) The Mental Health Services Fund.~~

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

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

~~(2) With respect to all other funds, and unless otherwise specified, if the total moneys transferred to the General Fund in any fiscal year from any special fund pursuant to this section 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.~~

20 ~~SEC. 8.~~ Section 830.3 of the Penal Code is amended to read:

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

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

37 (b) Voluntary fire wardens designated by the Director of
38 Forestry and Fire Protection pursuant to Section 4156 of the Public
39 Resources Code, provided that the primary duty of these peace

1 officers shall be the enforcement of the law as that duty is set forth
2 in Section 4156 of that code.

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

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

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

18 (f) Inspectors of the food and drug section designated by the
19 chief pursuant to subdivision (a) of Section 106500 of the Health
20 and Safety Code, 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 106500 of that code.

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

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

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

1 (j) Employees of the Department of Housing and Community
2 Development designated under Section 18023 of the Health and
3 Safety Code, provided that the primary duty of these peace officers
4 shall be the enforcement of the law as that duty is set forth in
5 Section 18023 of that code.

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

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

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

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

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

37 (p) The Deputy Director for Security designated by Section
38 8880.38 of the Government Code, and all lottery security personnel
39 assigned to the California State Lottery and designated by the
40 director, provided that the primary duty of any of those peace

1 officers shall be the enforcement of the laws related to assuring
2 the integrity, honesty, and fairness of the operation and
3 administration of the California State Lottery.

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

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

11 (r) The chief and assistant chief of museum security and safety
12 of the California Science Center, as designated by the executive
13 director pursuant to Section 4108 of the Food and Agricultural
14 Code, provided that the primary duty of those peace officers shall
15 be the enforcement of the law as that duty is set forth in Section
16 4108 of the Food and Agricultural Code.

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

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

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

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

38 (v) The Chief, Deputy Chief, supervising investigators, and
39 investigators of the Office of Protective Services of the State
40 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