

AMENDED IN ASSEMBLY JUNE 27, 2011

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, 2709, 2786, and 2798 of, and to add Sections 2786.2 and 2786.5 to, the Business and Professions 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. *The bill would require meetings of the board to be held in the northern and southern parts of the state.*

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 require new nursing schools seeking board approval to be recognized or approved by an accrediting agency recognized by the United States Department of Education.* 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.

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.

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

29 (c) This section shall remain in effect only until January 1, 2016,
30 and as of that date is repealed, unless a later enacted statute, that

1 is enacted before January 1, 2016, 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 SEC. 3. Section 2708 of the Business and Professions Code is
6 amended to read:

7 2708. (a) The board shall appoint an executive officer who
8 shall perform the duties delegated by the board and who shall be
9 responsible to it for the accomplishment of those duties.

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

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

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15 and as of that date is repealed, unless a later enacted statute, that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

17 SEC. 4. Section 2709 of the Business and Professions Code is
18 amended to read:

19 2709. The board for the purpose of transacting its business
20 shall meet at least once every three months, at times and places it
21 designates by resolution. *Meetings shall be held in the northern*
22 *and southern parts of the state.*

23 ~~SEC. 4.~~

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

26 2786. (a) An approved school of nursing is one that has been
27 approved by the board, gives the course of instruction approved
28 by the board, covering not less than two academic years, is
29 affiliated or conducted in connection with one or more hospitals,
30 and is an institution of higher education. For purposes of this
31 section, "institution of higher education" includes, but is not limited
32 to, community colleges offering an associate of arts or associate
33 of science degree, *or an entry-level master's degree*, and private
34 postsecondary institutions offering an associate of arts, associate
35 of science, or baccalaureate degree and not subject to the California
36 Private Postsecondary Education Act of 2009 (Chapter 8
37 (commencing with Section 94800) of Part 59 of Division 10 of
38 Title 3 of the Education Code).

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

as required by the board, and that is 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, shall be approved by the board to grant an associate of arts or associate of science degree to individuals who graduate from the school of nursing or to grant a baccalaureate degree in nursing with successful completion of an additional course of study as approved by the board and the institution involved.

(c) If an institution of higher education, an affiliated institution, or an institution 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), applies for approval of a new school of nursing, the school of nursing shall be required to be recognized or approved by an accrediting agency recognized by the United States Department of Education.

~~(e)~~

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

~~(d)~~

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

~~SEC. 5.~~

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

2786.2. All private postsecondary schools of nursing approved by the board pursuant to subdivision (b) of Section 2786 shall comply with Article 8 (commencing with Section 94897) to Article 16 (commencing with Section 94928), inclusive, of, and shall be

1 subject to Article 18 (commencing with Section 94932) of, Chapter
2 8 of Part 59 of Division 10 of Title 3 of the Education Code. The
3 board shall have a memorandum of understanding with the Bureau
4 for Postsecondary Education to ensure compliance with these
5 provisions, including the handling of student complaints regarding
6 these approved schools of nursing.

7 ~~SEC. 6.~~

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

10 2786.5. (a) An institution of higher education or a private
11 postsecondary school of nursing approved by the board pursuant
12 to subdivision (b) of Section 2786 shall remit to the board for
13 deposit in the Board of Registered Nursing Fund the following
14 fees, in accordance with the following schedule:

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

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

19 (3) The processing fee for authorization of a substantive change
20 to an approval of a school of nursing shall be five hundred dollars
21 (\$500).

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

31 (c) If the board determines that the annual cost of providing
32 oversight and review of a school of nursing, as required by this
33 article, is less than the amount of any fees required to be paid by
34 that institution pursuant to this article, the board may decrease the
35 fees applicable to that institution to an amount that is proportional
36 to the board's costs associated with that institution.

37 ~~SEC. 7.~~

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

1 2798. (a) It is unlawful for anyone to conduct a school of
2 nursing unless the school has been approved by the board.

3 (b) If the board has a reasonable belief, either by complaint or
4 otherwise, that a school is allowing students to apply for its nursing
5 program and that nursing program does not have the approval of
6 the board, the board shall immediately order the school to cease
7 and desist from offering students the ability to enroll in its nursing
8 program. The board shall also notify the Attorney General's office
9 that the school is offering students the ability to enroll in a nursing
10 program that does not have the approval of the board.

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

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

16 ~~SEC. 8.~~

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

18 830.3. The following persons are peace officers whose authority
19 extends to any place in the state for the purpose of performing
20 their primary duty or when making an arrest pursuant to Section
21 836 as to any public offense with respect to which there is
22 immediate danger to person or property, or of the escape of the
23 perpetrator of that offense, or pursuant to Section 8597 or 8598 of
24 the Government Code. These peace officers may carry firearms
25 only if authorized and under those terms and conditions as specified
26 by their employing agencies:

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

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

39 (c) Employees of the Department of Motor Vehicles designated
40 in Section 1655 of the Vehicle Code, provided that the primary

1 duty of these peace officers shall be the enforcement of the law as
2 that duty is set forth in Section 1655 of that code.

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

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

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

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

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

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

37 (j) Employees of the Department of Housing and Community
38 Development designated under Section 18023 of the Health and
39 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 18023 of that code.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (v) The Chief, Deputy Chief, supervising investigators, and
36 investigators of the Office of Protective Services of the State
37 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