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Assembly
California Legislature
Committee on Rules

KEN COOLEY
CHAIR

Sunday, August 30, 2020
Upon Call of the Chair
State Capitol, Room 4202

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CONSENT AGENDA

REQUEST TO ADD URGENCY CLAUSE

1. SB 1159 (Hill) Workers' compensation: COVID-19: critical workers [Page 2](#)

REQUESTS TO WAIVE JOINT RULE 61(B)(17)

2. SB 51 (Durazo) California Competes tax credit: refunds [Page 17](#)
3. SB 275 (Pan) Health Care and Essential Workers: personal protective equipment [Page 57](#)
4. SB 776 (Skinner) Peace officers: release of records [Page 76](#)
5. SB 803 (Beall) Mental health services: peer support specialist certification [Page 97](#)
6. SB 1159 (Hill) Workers' compensation: COVID-19: critical workers [Page 113](#)

California State Senate

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THIRTEENTH SENATE DISTRICT



COMMITTEES
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RETIREMENT
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APPROPRIATIONS
BUSINESS, PROFESSIONS &
ECONOMIC DEVELOPMENT
ENERGY, UTILITIES &
COMMUNICATIONS
ENVIRONMENTAL QUALITY
GOVERNMENTAL ORGANIZATION

August 28, 2020

Assemblymember Ken Cooley
Chair, Assembly Committee on Rules
State Capitol, Room 3016
Sacramento, CA 95814

Dear Assemblymember Cooley,

I respectfully request the authorization of an urgency for Senate Bill 1159, which is currently on the Assembly Floor.

As you know, COVID-19 has ravaged our nation, and it has hit California's workforce particularly hard. Many constituents, particularly teachers and first responders, have called my office, expressing fear and extreme concern at the possibility of contracting COVID-19 at work and being unable to care for their family. This kind of fear can cripple both the economy and spirit of a great state like California.

SB 1159, co-authored by Assemblymember Daly, meets this challenge by extending a careful, well-formed workers' compensation presumption to both frontline workers (police officers, firefighters, and medical providers) and workers who contract COVID-19 due to an outbreak of the disease at their workplace. It is critical that this presumption is in place as soon as possible for workers who are seriously ill and need medical care. An urgency clause will ensure that workers receive the medical care they need without expensive and time-consuming litigation.

Thank you for your consideration of my request. If you have any questions, please contact me on my cell at (650) 619-6430 or my Staff Director, Gideon L. Baum, at (415) 370-2978.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Hill".

Senator, 13th District

PROPOSED AMENDMENTS

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PROPOSED AMENDMENTS TO SENATE BILL NO. 1159

AMENDED IN ASSEMBLY AUGUST 25, 2020

AMENDED IN ASSEMBLY AUGUST 12, 2020

AMENDED IN ASSEMBLY AUGUST 3, 2020

AMENDED IN SENATE JUNE 18, 2020

AMENDED IN SENATE APRIL 22, 2020

AMENDED IN SENATE APRIL 1, 2020



RN2015992

SENATE BILL

No. 1159

Introduced by Senator Hill

(Principal coauthor: Assembly Member Daly)

February 20, 2020

An act to add Section 77.8 to, and to add and repeal Sections 3212.86, 3212.87, and 3212.88 of, the Labor Code, relating to workers' ~~compensation~~ *compensation, and declaring the urgency thereof, to take effect immediately.*

Amendment 1

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Hill. Workers' compensation: COVID-19: critical workers.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee, as defined, for injuries sustained in the course of employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of the employment.

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Existing law governs the procedures for filing a claim for workers’ compensation, including filing a claim form, and provides that an injury is presumed compensable if liability is not rejected within 90 days after the claim form is filed, as specified. Existing case law provides for how certain presumptions may be rebutted.

This bill would define “injury” for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. The bill would create a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. The bill would limit the applicability of the presumption under certain circumstances. The bill would require an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. The bill would also make a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days. Until January 1, 2023, the bill would allow for a presumption of injury for all employees whose fellow employees at their place of employment experience specified levels of positive testing, and whose employer has 5 or more employees.

This bill would require the Commission on Health and Safety and Workers’ Compensation to conduct a study of the impacts of COVID-19 and the specific presumptions created by this bill and report its findings to the Legislature and the Governor, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

Page 2 1 SECTION 1. Section 77.8 is added to the Labor Code, to read:
2 77.8. The Commission on Health and Safety and Workers’
3 Compensation shall conduct a study of the impacts claims of
4 COVID-19 have had on the workers’ compensation system,
5 including overall impacts on indemnity benefits, medical benefits,
6 and death benefits, including differences in the impacts across
7 differing occupational groups, and including the effect of Sections
Page 3 1 3212.87 and 3212.88. A preliminary report or a final report shall

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Page 3 2 be delivered to the Legislature, pursuant to Section 9795 of the
3 Government Code, and the Governor by December 31, 2021, and
4 the final report shall be delivered to the Legislature, pursuant to
5 Section 9795 of the Government Code, and the Governor no later
6 than April 30, 2022.

8 SEC. 2. Section 3212.86 is added to the Labor Code,
9 immediately following Section 3212.85, to read:

10 3212.86. (a) This section applies to any employee with a
11 COVID-19-related illness.

12 (b) The term “injury,” as used in this division, includes illness
13 or death resulting from COVID-19 if both of the following
14 circumstances apply:

15 (1) The employee has tested positive for or was diagnosed with
16 COVID-19 within 14 days after a day that the employee performed
17 labor or services at the employee’s place of employment at the
18 employer’s direction.

21 (2) The day referenced in paragraph (1) on which the employee
22 performed labor or services at the employee’s place of employment
23 at the employer’s direction was on or after March 19, 2020, and
24 on or before July 5, 2020. The date of injury shall be the last date
25 the employee performed labor or services at the employee’s place
26 of employment at the employer’s direction.

27 (3) If paragraph (1) is satisfied through a diagnosis of
28 COVID-19, the diagnosis was done by a licensed physician and
30 surgeon holding an M.D. or D.O. degree or state licensed physician
31 assistant or nurse practitioner, acting under the review or
32 supervision of a physician and surgeon pursuant to standardized
33 procedures or protocols within their lawfully authorized scope of
34 practice, and that diagnosis is confirmed by testing or by a
35 COVID-19 serologic test within 30 days of the date of the
36 diagnosis.

37 (c) The compensation that is awarded for injury pursuant to this
38 section shall include full hospital, surgical, medical treatment,
39 disability indemnity, and death benefits, as provided by this
40 division.

Page 4 5 (d) (1) If an employee has paid sick leave benefits specifically
6 available in response to COVID-19, those benefits shall be used
7 and exhausted before any temporary disability benefits or benefits
8 under Section 4800, 4800.5, or 4850 are due and payable. If an
9 employee does not have those sick leave benefits, the employee

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Page 4 10 shall be provided temporary disability benefits or Section 4800,
11 4800.5, or 4850 benefits, if applicable, from the date of disability.
12 There shall not be a waiting period for temporary disability
13 benefits.

14 (2) To qualify for temporary disability or Section 4800, 4800.5,
15 or 4850 benefits under this section, an employee shall satisfy either
16 of the following:

17 (A) If the employee has tested positive or is diagnosed with
18 COVID-19 on or after May 6, 2020, the employee shall be certified
19 for temporary disability within the first 15 days after the initial
20 diagnosis, and shall be recertified for temporary disability every
21 15 days thereafter, for the first 45 days following diagnosis.

22 (B) If the employee has tested positive or was diagnosed with
23 COVID-19 before May 6, 2020, the employee shall have obtained
24 a certification, no later than May 21, 2020, documenting the period
25 for which the employee was temporarily disabled and unable to
26 work, and shall be recertified for temporary disability every 15
27 days thereafter, for the first 45 days following diagnosis.

28 (3) An employee shall be certified for temporary disability by
29 a physician holding a physician’s and surgeon’s license issued
30 pursuant to Chapter 5 (commencing with Section 2000) of Division
31 2 of the Business and Professions Code. If the employee has a
32 predesignated physician pursuant to subdivision (d) of Section
33 4600, is covered by a medical provider network pursuant to Article
34 2.3 (commencing with Section 4616) of Chapter 2 of Part 2, is
35 covered by a workers’ compensation health care organization
36 pursuant to Article 2 (commencing with Section 4600) of Chapter
37 2 of Part 2, or is covered by a group health plan, the certifying
38 physician shall be a physician and surgeon in that network,
39 organization, or plan. Otherwise, the certifying physician may be
40 a physician and surgeon of the employee’s choosing.

Page 5 1 (e) An injury described in subdivision (b) is presumed to arise
2 out of and in the course of the employment. This presumption is
3 disputable and may be controverted by other evidence. Unless
4 controverted, the appeals board is bound to find in accordance
5 with the presumption.

6 (f) Notwithstanding Section 5402, if liability for a claim of a
7 COVID-19-related illness is not rejected within 30 days after the
8 date the claim form is filed pursuant to Section 5401, the illness
9 shall be presumed compensable. The presumption of this

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Page 5 10 subdivision is rebuttable only by evidence discovered subsequent
11 to the 30-day period.
12 (g) The Department of Industrial Relations shall waive the right
13 to collect any death benefit payment due pursuant to Section 4706.5
14 arising out of claims covered by this section.
19 (h) This section applies to all pending matters except as
20 otherwise specified, including, but not limited to, pending claims
21 relying on Executive Order N-62-20. This section is not a basis to
22 rescind, alter, amend, or reopen any final award of workers’
23 compensation benefits.
24 (i) For purposes of this section:
26 (1) “COVID-19” means the 2019 novel coronavirus disease.
27 (2) “Place of employment” does not include an employee’s
28 residence.
29 (j) This section shall remain in effect only until January 1, 2023,
30 and as of that date is repealed.
32 SEC. 3. Section 3212.87 is added to the Labor Code, to read:
33 3212.87. (a) This section applies to the following employees:
34 (1) Active firefighting members, whether volunteers, partly
35 paid, or fully paid, of all of the following fire departments:
36 (A) A fire department of a city, county, city and county, district,
37 or other public or municipal corporation or political subdivision.
38 (B) A fire department of the University of California and the
39 California State University.
40 (C) The Department of Forestry and Fire Protection.
Page 6 1 (D) A county forestry or firefighting department or unit.
2 (2) Active firefighting members of a fire department that serves
3 a United States Department of Defense installation and who are
4 certified by the United States Department of Defense as meeting
5 its standards for firefighters.
6 (3) Active firefighting members of a fire department that serves
7 a National Aeronautics and Space Administration installation and
8 who adhere to training standards established in accordance with
9 Article 4 (commencing with Section 13155) of Chapter 1 of Part
10 2 of Division 12 of the Health and Safety Code.
11 (4) Active firefighting members of a fire department that
12 provides fire protection to a commercial airport regulated by the
13 Federal Aviation Administration (FAA) under Part 139
14 (commencing with Section 139.5) of Subchapter G of Chapter 1
15 of Title 14 of the Federal Code of Regulations and are trained and

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Page 6 16 certified by the State Fire Marshal as meeting the standards of Fire
 17 Control 5 and Section 139.319 of Title 14 of the Federal Code of
 18 Regulations
 19 (5) Peace officers, as defined in Section ~~830.1, subdivision (a)~~
 20 *830.1 of the Penal Code, subdivisions (a), (b), (e), (f), and (h) of*
 + ~~Section 830.2, and 830.2 of the Penal Code, subdivision (a) of~~
 + *Section 830.3 of the Penal Code, subdivisions (a) and (b) of Section*
 21 ~~830.37, 830.37 of the Penal Code, subdivisions (a) and (b) of~~
 + *Section 830.5 of the Penal Code, and subdivision (a) of Section*
 + *830.53 of the Penal Code, who are primarily engaged in active*
 22 *law enforcement activities.*
 23 (6) (A) Fire and rescue services coordinators who work for the
 24 Office of Emergency Services.
 25 (B) For purposes of this paragraph, “fire and rescue services
 26 coordinators” means coordinators with any of the following job
 27 classifications: coordinator, senior coordinator, or chief
 28 coordinator.
 29 (7) An employee who provides direct patient care, or a custodial
 30 employee in contact with COVID-19 patients, who works at a
 31 health facility. For the purposes of this subdivision, “health facility”
 32 means a health facility as defined in subdivision (a), (b), (c), (m),
 33 or (n) of Section 1250 of the Health and Safety Code.
 35 (8) An authorized registered nurse, emergency medical
 36 technician-I, emergency medical technician-II, emergency medical
 37 technician-paramedic, as described in Chapter 2 (commencing
 38 with Section 1797.50) of Division 2.5 of the Health and Safety
 39 Code.

**Amendment 2
Amendments 3 & 4**

Amendment 5

Page 7 1 (9) An employee who provides direct patient care for a home
 2 health agency, as defined under Section 1727 of the Health and
 3 Safety Code.
 4 (10) Employees of health facilities, other than those described
 5 in paragraph (7). For these employees, the ~~presumption shall be~~
 6 ~~controverted with evidence that the employee did not have contact~~
 7 ~~with a health facility patient within the last 14 days who tested~~
 8 ~~positive for COVID-19. If the presumption is rebutted, the claim~~
 9 ~~shall be evaluated pursuant to Sections 3202.5 and 3600 of the~~
 10 ~~Labor Code. presumption shall not apply if the employer can~~
 + *establish that the employee did not have contact with a health*
 + *facility patient within the last 14 days who tested positive for*
 + *COVID-19. If it is determined that the presumption does not apply,*

Amendment 6

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+ *the claim shall be evaluated pursuant to Sections 3202.5 and 3600.*
11 For the purposes of this subdivision, “health facility” means a
12 health facility, as defined in subdivision (a), (b), (c), (m), or (n) of
+ Section 1250 of the Health and Safety Code.

+ (11) *A provider of in-home supportive services under Article 7*
+ *(commencing with Section 12300) of Chapter 3 of Part 3 of*
+ *Division 9 of, or Sections 14132.95, 14132.952, and 14132.956*
+ *of, the Welfare and Institutions Code, when they provide the*
+ *in-home supportive services outside their own home or residence.*

13 (b) The term “injury,” as used in this division, includes illness
14 or death resulting from COVID-19 if all of the following
15 circumstances apply:

16 (1) The employee has tested positive for COVID-19 within 14
17 days after a day that the employee performed labor or services at
18 the employee’s place of employment at the employer’s direction.

22 (2) The day referenced in paragraph (1), on which the employee
23 performed labor or services at the employee’s place of employment
24 at the employer’s direction, was on or after July 6, 2020. The date
25 of injury shall be the last date the employee performed labor or
26 services at the employee’s place of employment at the employer’s
27 direction prior to the positive test.

33 (c) The compensation that is awarded for injury pursuant to this
34 section shall include full hospital, surgical, medical treatment,
35 disability indemnity, and death benefits, as provided by this
36 division.

Page 8

1 (d) ~~(1)~~ If an employee has paid sick leave benefits specifically
2 available in response to COVID-19, those benefits shall be used
3 and exhausted before any temporary disability benefits or benefits
4 under Section 4800, 4800.5, or 4850 are due and payable. If an
5 employee does not have those sick leave benefits, the employee
6 shall be provided temporary disability benefits or Section 4850
7 benefits, if applicable, from the date of disability. There shall not
8 be a waiting period for temporary disability benefits.

9 ~~(2) To qualify for temporary disability benefits or benefits~~
10 ~~described in Section 4800, 4800.5, or 4850 pursuant to this section,~~
11 ~~an employee shall have tested positive or be diagnosed with~~
12 ~~COVID-19 on or after July 6, 2020.~~

28 (e) An injury described in subdivision (b) is presumed to arise
29 out of and in the course of the employment, except as provided in
30 this subdivision. This presumption is disputable and may be

Amendment 7

Amendment 8

Amendment 9

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Page 8 31 controverted by other evidence. Unless controverted, the appeals
32 board is bound to find in accordance with the presumption. This
33 presumption shall be extended to a person described in subdivision
34 (a) following termination of service for a period of 14 days,
35 commencing with the last date actually worked in the specified
36 capacity at the employee’s place of employment as described in
37 subdivision (b).

38 (f) Notwithstanding Section 5402, if liability for a claim of a
39 COVID-19-related illness is not rejected within 30 days after the
40 date the claim form is filed pursuant to Section 5401, the illness
Page 9 1 shall be presumed compensable. The presumption of this
2 subdivision is rebuttable only by evidence discovered subsequent
3 to the 30-day period.

4 (g) The Department of Industrial Relations shall waive the right
5 to collect any death benefit payment due pursuant to Section 4706.5
6 arising out of claims covered by this section.

7 (h) This section applies to all pending matters, unless otherwise
8 specified in this section, but shall not be a basis to rescind, alter,
9 amend, or reopen any final award of workers’ compensation
10 benefits.

11 (i) For purposes of this section:

12 (1) “COVID-19” means the 2019 novel coronavirus disease.

13 (2) Unless otherwise indicated, “test” or “testing” means a PCR
14 (Polymerase Chain Reaction) test approved for use or approved
15 for emergency use by the United States Food and Drug
16 Administration to detect the presence of viral RNA. “Test” or
17 “testing” does not include serologic testing, also known as antibody
18 testing. “Test” or “testing” may include any other viral culture test
19 approved for use or approved for emergency use by the United
20 States Food and Drug Administration to detect the presence of
21 viral RNA which has the same or higher sensitivity and specificity
22 as the PCR Test.

23 (3) An “employee’s place of employment” does not include an
24 employee’s home or residence.

25 (j) This section shall remain in effect only until January 1, 2023,
26 and as of that date is repealed.

35 SEC. 4. Section 3212.88 is added to the Labor Code, to read:

36 3212.88. (a) This section applies to employees who are not
37 described in Section 3212.87, who test positive during an outbreak

PROPOSED AMENDMENTS

Page 9 38 at the employee’s specific place of employment, and whose
39 employer has five or more employees.

Page 10 1 (b) The term “injury,” as used in this division, includes illness
2 or death resulting from COVID-19 if all of the following
3 circumstances apply:

4 (1) The employee tests positive for COVID-19 within 14 days
5 after a day that the employee performed labor or services at the
6 employee’s place of employment at the employer’s direction.

7 (2) The day referenced in paragraph (1) on which the employee
8 performed labor or services at the employee’s place of employment
9 at the employer’s direction was on or after July 6, 2020. The date
10 of injury shall be the last date the employee performed labor or
11 services at the employee’s place of employment at the employer’s
12 direction prior to the positive test.

13 ~~(3) The employee’s specific place of employment is, at the time
14 of the employee’s positive test, experiencing an outbreak.~~

+ (3) *The employee’s positive test occurred during a period of an
15 outbreak at the employee’s specific place of employment.*

16 (c) The compensation that is awarded for injury pursuant to this
+ section shall include full hospital, surgical, medical treatment,
17 disability indemnity, and death benefits, as provided by this
18 division.

19 (d) ~~(4) If an employee has paid sick leave benefits specifically
20 available in response to COVID-19, those benefits shall be used
21 and exhausted before any temporary disability benefits, benefits
22 under Section 4800, 4800.5, or 4850 or Section 44977, 44984,
23 45192, 45196, 87780, 87787, 88192, or 88196 of the Education
24 Code are due and payable. If an employee does not have those sick
25 leave benefits, the employee shall be provided temporary disability
26 benefits or Section 4850 benefits, if applicable, from the date of
27 disability. There shall not be a waiting period for temporary
28 disability benefits.~~

29 ~~(2) To qualify for temporary disability benefits or benefits
30 described in Section 4800, 4800.5, or 4850 or Section 44977,
31 44984, 45192, 45196, 87780, 87787, 88192, or 88196 of the
32 Education Code pursuant to this section, an employee shall have
33 tested positive or be diagnosed with COVID-19 on or after July
34 6, 2020.~~

35 (e) (1) An injury described in subdivision (b) is presumed to
36 arise out of and in the course of the employment, except as

Amendment 10

Amendment 11

Amendment 12

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Page 10 37 provided in this subdivision. This presumption is disputable and
38 may be controverted by other evidence. Unless controverted, the
39 appeals board is bound to find in accordance with the presumption.

Page 11 40 This presumption shall be extended to a person described in
1 subdivision (a) following termination of service for a period of 14
2 days, commencing with the last date actually worked in the
3 specified capacity at the employee’s place of employment. This
4 section does not affect an employee’s rights to compensation for
5 an injury or illness under this division in accordance with a
6 preponderance of evidence.

7 (2) Evidence relevant to controverting the presumption may
8 include, but is not limited to, evidence of measures in place to
9 reduce potential transmission of COVID-19 in the employee’s
10 place of employment and evidence of an employee’s
11 nonoccupational risks of COVID-19 infection.

12 (f) Notwithstanding Section 5402, if liability for a claim of a
13 COVID-19-related illness is not rejected within 45 days after the
14 date the claim form is filed pursuant to Section 5401, the illness
15 shall be presumed compensable. The presumption of this
16 subdivision is rebuttable only by evidence discovered subsequent
17 to the 45-day period.

18 (g) The Department of Industrial Relations shall waive the right
19 to collect any death benefit payment due pursuant to Section 4706.5
20 arising out of claims covered by this section.

21 (h) This section applies to all pending matters, unless otherwise
22 specified in this section, but is not a basis to rescind, alter, amend,
23 or reopen any final award of workers’ compensation benefits.

24 (i) When the employer knows or reasonably should know that
25 an employee has tested positive for COVID-19, the employer shall
26 report to their claims administrator in writing via electronic mail
27 or facsimile within three business days all of the following:

28 (1) An employee has tested positive. For purposes of this
29 reporting, the employer shall not provide any personally
30 identifiable information regarding the employee who tested positive
31 for COVID-19 unless the employee asserts the infection is work
32 related or has filed a claim form pursuant to Section 5401.

33 (2) The date that the employee tests positive, which is the date
34 the specimen was collected for testing.

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Page 11 35 (3) The specific address or addresses of the employee’s specific
36 place of ~~employment~~. *employment during the 14-day period*
+ *preceding the date of the employee’s positive test.*

Amendment 13

37 (4) The highest number of employees who reported to work at
38 the employee’s specific place of employment in the ~~preceding~~
39 ~~45-day period~~. *45-day period preceding the last day the employee*
+ *worked at each specific place of employment.*

Amendment 14

Page 12 1 (j) An employer or other person acting on behalf of an employer
2 who intentionally submits false or misleading information *or fails*
3 *to submit information* when reporting pursuant to subdivision (i)
4 is subject to a civil penalty in the amount of up to ten thousand
5 dollars (\$10,000) to be assessed by the Labor Commissioner.

Amendment 15

6 (1) If, upon inspection or investigation, the Labor Commissioner
7 determines that an employer or other person has intentionally
8 submitted false or misleading information in violation of
9 subdivision (i), the Labor Commissioner may issue a citation to
10 the person in violation. The citation may be served personally, in
11 the same manner as provided for service of a summons as described
12 in Chapter 4 (commencing with Section 413.10) of Title 5 of Part
13 2 of the Code of Civil Procedure, by certified mail with return
14 receipt requested, or by registered mail in accordance with
15 subdivision (c) of Section 11505 of the Government Code. Each
16 citation shall be in writing and shall describe the nature of the
17 violation, including reference to the statutory provision alleged to
18 have been violated.

19 (2) If a person desires to contest a citation or the proposed
20 assessment of a civil penalty therefor, they shall, within 15 business
21 days after service of the citation, notify the office of the Labor
22 Commissioner which appears on the citation of their request for
23 an informal hearing. The Labor Commissioner or their deputy or
24 agent shall, within 30 days, hold a hearing at the conclusion of
25 which the citation or proposed assessment of a civil penalty shall
26 be affirmed, modified, or dismissed. The decision of the Labor
27 Commissioner shall consist of a notice of findings, findings, and
28 order which shall be served on all parties to the hearing within 15
29 days after the hearing by regular first-class mail at the last known
30 address of the party on file with the Labor Commissioner. Service
31 shall be completed pursuant to Section 1013 of the Code of Civil
32 Procedure. Any amount found due by the Labor Commissioner as
33 a result of a hearing shall become due and payable 45 days after

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Page 12 34 notice of the findings and written findings and order have been
35 mailed to the party assessed. A writ of mandate may be taken from
36 this finding to the appropriate superior court, as long as the party
37 agrees to pay any judgment and costs ultimately rendered by the
38 court against the party for the assessment. The writ of mandate
39 shall be taken within 45 days of service of the notice of findings,
40 findings, and order thereon.

Page 13 1 (3) An employer or person to which a citation has been issued
2 shall, in lieu of contesting a citation pursuant to this section,
3 transmit to the office of the Labor Commissioner designated on
4 the citation the amount specified for the violation within 15
5 business days after issuance of the citation.

6 (4) If the party filing a writ of mandate is unsuccessful in
7 challenging the decision of the hearing officer, the Labor
8 Commissioner shall recover costs and attorney fees.

9 (k) (1) The claims administrator shall use information reported
10 pursuant to subdivision (i) to determine if an outbreak has occurred
11 for the purpose of administering a claim pursuant to this section.
12 To calculate the number of employees at a specific place of
13 employment, the claims administrator shall utilize the data reported
14 pursuant to subdivision (i) for the first employee who is part of
15 the outbreak. *outbreak, or, for claims between July 6, 2020, and
+ the effective date of this section, the number reported under
+ paragraph (2).*

+ (2) *Any employer who is aware of an employee testing positive
+ on or after July 6, 2020, and prior to the effective date of this
+ section, shall report to their claims administrator, in writing via
+ electronic mail or facsimile, within 30 business days of the effective
+ date of this section, all of the data required in subdivision (i). For
+ the data required by paragraph (4) of subdivision (i), the employer
+ shall instead report the highest number of employees who reported
+ to work at each of the employee’s specific places of employment
+ on any given work day between July 6, 2020, and the effective date
+ of this section. The claims administrator shall use the information
+ reported under this paragraph to determine if an outbreak has
+ occurred from July 6, 2020, to the effective date of this section,
+ for the purpose of applying the presumption under this section.*

+ (l) *A claim is not part of an outbreak if it occurs during a
+ continuous 14-day period where the requisite number of positive
+ tests under paragraph (4) of subdivision (m) have not been met.*

Amendment 16

Amendment 17

PROPOSED AMENDMENTS

+ *For purposes of applying the presumption in this section, the claims administrator shall continually evaluate each claim to determine whether the requisite number of positive tests have occurred during the surrounding 14-day periods.*

Page 13

16 (†)

+ (m) For purposes of this section:

17 (1) “COVID-19” means the 2019 novel coronavirus disease.

18 (2) Unless otherwise indicated, “test” or “testing” means a PCR
19 (Polymerase Chain Reaction) test approved for use or approved
20 for emergency use by the United States Food and Drug
21 Administration to detect the presence of viral RNA. “Test” or
22 “testing” does not include serologic testing, also known as antibody
23 testing. “Test” or “testing” may include any other viral culture test
24 approved for use or approved for emergency use by the United
25 States Food and Drug Administration to detect the presence of
26 viral RNA which has the same or higher sensitivity and specificity
27 as the PCR Test.

28 (3) (A) “A specific place of employment” means the building,
29 store, facility, or agricultural field where an employee performs
30 work at the employer’s direction. ~~It does not apply to buildings or
31 other locations of the employer that the employee did not enter.~~
32 “A specific place of employment” does not include the employee’s
33 home or residence, unless the employee provides home health care
34 services to another individual at the employee’s home or residence.

+ (B) *In the case of an employee who performs work at the
+ employer’s direction in multiple places of employment within 14
+ days of the employee’s positive test, the employee’s positive test
+ shall be counted for the purpose of determining the existence of
+ an outbreak at each of those places of employment, and if an
+ outbreak exists at any one of those places of employment, that
+ shall be the employee’s “specific place of employment.”*

35 (4) An “outbreak” exists if within 14 calendar days one of the
36 following occurs at a specific place of employment:

37 (A) If the employer has 100 employees or fewer at a specific
38 place of employment, ~~five~~ 4 employees test positive for COVID-19.

39 (B) If the employer has more than 100 employees at a specific
40 place of employment, ~~5~~ 4 percent of the number of employees who
Page 14 1 reported to the specific place of employment, test positive for
2 COVID-19.

Amendment 18

Amendment 19

Amendment 20

Amendment 21

Amendment 22

Amendment 23

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Amendment 24**

+ (C) A specific place of employment is ordered to close by a local
+ public health department, the State Department of Public Health,
+ the Division of Occupational Safety and Health, or a school
+ superintendent due to a risk of infection with COVID-19.

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3 ~~(m)~~

4 (n) This section shall remain in effect only until January 1, 2023,
+ and as of that date is repealed.

+ SEC. 5. This act is an urgency statute necessary for the
+ immediate preservation of the public peace, health, or safety within
+ the meaning of Article IV of the California Constitution and shall
+ go into immediate effect. The facts constituting the necessity are:

+ In light of the Governor’s declaration on March 4, 2020, of a
+ state of emergency due to the spread of COVID-19, and because
+ of the heightened risk of COVID-19 infection to frontline workers
+ and workers whose workplaces have suffered a COVID-19
+ outbreak, it is necessary that this act take effect immediately.

Amendment 25

Amendment 26

PROPOSED AMENDMENTS

O



STATE CAPITOL
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CHIEF ADMINISTRATIVE OFFICER
DEBRA GRAVERT

Assembly
California Legislature
Committee on Rules

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MARC LEVINE (D-ALT.)
TYLER DIEP (R-ALT.)

August 28, 2020

Assembly Rules Committee
California State Capitol, Room 3016
Sacramento Rules Committee

Dear Members of the Committee on Rules:

I write to request that we approve a Joint Rule 61(b)(17) waiver for the following bills so that they may be amended on the Assembly Floor:

SB 51 (Durazo)
SB 275 (Pan)
SB 776 (Skinner)
SB 803 (Beall)
SB 1159 (Hill)

Sincerely,

KEN COOLEY
Chair, Committee on Rules

PROPOSED AMENDMENTS

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PROPOSED AMENDMENTS TO SENATE BILL NO. 51

AMENDED IN ASSEMBLY SEPTEMBER 5, 2019

AMENDED IN ASSEMBLY JUNE 13, 2019

AMENDED IN SENATE APRIL 29, 2019

AMENDED IN SENATE MARCH 25, 2019

SENATE BILL

No. 51



RN2016050

**Amendment 1
Amendment 2**

Introduced by Senator ~~Hertzberg Durazo~~

(Principal coauthor: Assembly Member Bonta)

(Coauthors: Senators ~~Bradford, Galgiani, Moorlach, Wieckowski, and Wiener~~)

(Coauthors: Assembly Members ~~Jones-Sawyer, Lackey, McCarty, and Gonzalez~~)

(Principal coauthor: Senator Allen)

(Principal coauthor: Assembly Member Calderon)

December 4, 2018

Amendment 3

~~An act to amend Sections 99, 185, 301, 329, 1003, 1100, 14001.1, and 14101 of, and to add Division 2.5 (commencing with Section 11000) to, the Financial Code, relating to financial institutions, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 17059.2 and 23689 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 51, as amended, ~~Hertzberg Durazo~~. ~~Financial institutions: cannabis. California Competes tax credit: refunds.~~

The Personal Income Tax Law and the Corporation Tax Law allow a credit (CalCompetes tax credit) against the taxes imposed under those

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laws, for each taxable year beginning on and after January 1, 2014, and before January 1, 2030, in an amount as provided in a written agreement between the Governor’s Office of Business and Economic Development and the taxpayer, approved by the California Competes Tax Credit Committee, and based on specified factors, including the number of jobs the taxpayer will create or retain in the state and the amount of investment in the state by the taxpayer. Existing law establishes the continuously appropriated Tax Relief and Refund Account and provides that specified payments required to be made to taxpayers, including refunds, are to be paid from that account.

This bill, for taxable years beginning on or after January 1, 2021, would allow a qualified taxpayer, to the extent a CalCompetes tax credit amount exceeds a qualified taxpayer’s tax liability for the taxable year, as specified, to elect to be paid a refund from the Tax Relief and Refund Account, not to exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year. The bill would define a “qualified taxpayer” as a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs in the state each year for a period of 10 years. The bill would require a qualified taxpayer that receives a refund to reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state, as provided.

By authorizing new refund payments to be paid from the continuously appropriated Tax Relief and Refund Account, this bill would make an appropriation.

~~(1) Existing law, the Financial Institutions Law, regulates the activities of various financial entities, including commercial banks, industrial banks, trust companies, credit unions, and savings and loan associations. The Banking Law defines and regulates state banks and commits the enforcement of banking laws to the Commissioner of Business Oversight. The California Credit Union Law provides for the licensure and regulation of credit unions by the Commissioner of Business Oversight and makes a willful violation of that law a crime.~~

~~The Control, Regulate and Tax Adult Use of Marijuana Act, an initiative measure approved as Proposition 64 at the November 8, 2016, statewide general election, authorizes a person who obtains a state license under the act to engage in commercial adult-use cannabis activity pursuant to that license and applicable local ordinances. The Medicinal and Adult-Use Cannabis Regulation and Safety Act, among other things,~~

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consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities.

~~This bill would create the Cannabis Limited Charter Banking and Credit Union Law, to be administered by the Commissioner of Business Oversight and the Department of Business Oversight. The bill would create the Cannabis Limited Charter Bank and Credit Union Advisory Board and specify its composition, to include the Treasurer, the Controller, and the Chief of the Bureau of Cannabis Control, and commit to it the general responsibility for ensuring that this law functions in a safe and efficient way. The bill would prescribe the powers and duties of the board, including reviewing department enforcement reports, holding meetings that would be open to public comment, and issuing its own recommendations, which would be submitted to the Legislature and the Governor. The board would also be required to provide guidance on specified investment activities.~~

~~The bill would provide for the licensure and regulation of cannabis limited charter banks and credit unions for the purpose of providing banking services, as defined, to cannabis businesses. The bill would require a person who desires to be licensed as a cannabis limited charter bank or credit union to submit an application to the department, and would require that person to elect to form under either the Banking Law or the California Credit Union Law. The bill would authorize the department to charge an applicant for a cannabis limited charter bank or credit union license a reasonable fee. The bill would require a licensee to comply with all requirements in the Financial Institutions Law, and either the Banking Law or the California Credit Union Law, as applicable, except to the extent that any requirement of those laws are inconsistent with a provision of the Cannabis Limited Charter Banking and Credit Union Law. By expanding the application of the California Credit Union Law, a willful violation of which is a crime, the bill would impose a state-mandated local program. The bill would require a cannabis limited charter bank or credit union to adopt policies and practices to achieve the principles and goals outlined in the federal Bank Secrecy Act and cooperate with the federal Financial Crimes Enforcement Network. The bill would prohibit a cannabis limited charter bank or credit union from engaging in banking activity with any other financial institution that lacks a limited purpose charter issued under these provisions.~~

~~This bill would authorize a cannabis limited charter bank or credit union to issue to an account holder special purpose checks that would~~

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be valid for only specified purposes. The bill would authorize a cannabis limited charter bank or credit union to cash the checks it has issued, including those presented by parties that are not account holders, as specified. The bill would permit these checks to be used for the payment of state and local fees and taxes, payment of rent on property leased by, or on behalf of, the account holder's cannabis business, payment of vendors physically located in California, as specified, and the purchase of state and local bonds, as specified. The bill would provide that a person or entity is not required to accept these checks. The bill would require a cannabis limited charter bank or credit union to obtain and maintain insurance at all times that it is engaged in business, subject to certain requirements including that the insurance be in an amount acceptable to the commissioner. The bill would authorize a cannabis limited charter bank or credit union to charge fees for its banking services, and would require, in these circumstances, that each limited charter bank and credit union conspicuously post on its internet website the types of fees and their amounts, as specified. The bill would authorize a cannabis limited charter bank or credit union to enter into an agreement with another licensee to form a banking network, subject to the approval of the commissioner, to facilitate the provision of cannabis banking services.

The bill would require the Department of Business Oversight to adopt emergency regulations and would prohibit the department from issuing a license for these purposes prior to July 1, 2020, except as specified.

The bill would make the Cannabis Limited Charter Banking and Credit Union Law inoperative if the federal government removes cannabis and cannabis-related substances from the federal schedule of controlled substances or enacts legislation that establishes protections for depository institutions that provide financial services to cannabis-related legitimate businesses. The bill would also require the department, if either of these events occur, to post notice of the occurrence on its internet website, send notice to both the Secretary of State and the Office of Legislative Counsel, and provide guidance for the orderly resolution of all cannabis limited charter banks or credit unions licensed, as specified. The bill would require each cannabis limited charter bank or credit union to resolve within one year in accordance with specified requirements and would authorize the department to take certain actions to carry out those provisions.

The bill would make other conforming changes and would also make a statement of legislative findings.

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~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$. Appropriation: ~~no~~yes. Fiscal committee: yes.
State-mandated local program: ~~yes~~no.~~

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

+ SECTION 1. Section 17059.2 of the Revenue and Taxation Code is amended to read:

+ 17059.2. (a) (1) For each taxable year beginning on and after January 1, 2014, and before January 1, 2030, there shall be allowed as a credit against the “net tax,” as defined in Section 17039, an amount as determined by the committee pursuant to paragraph (2) and approved pursuant to Section 18410.2.

+ (2) The credit under this section shall be allocated by GO-Biz with respect to the 2013–14 fiscal year through and including the 2022–23 fiscal year. The amount of credit allocated to a taxpayer with respect to a fiscal year pursuant to this section shall be as set forth in a written agreement between GO-Biz and the taxpayer and shall be based on the following factors:

+ (A) The number of jobs the taxpayer will create or retain in this state.

+ (B) The compensation paid or proposed to be paid by the taxpayer to its employees, including wages and fringe benefits.

+ (C) The amount of investment in this state by the taxpayer.

+ (D) The extent of unemployment or poverty in the area according to the United States Census in which the taxpayer’s project or business is proposed or located.

+ (E) The incentives available to the taxpayer in this state, including incentives from the state, local government, and other entities.

+ (F) The incentives available to the taxpayer in other states.

+ (G) The duration of the proposed project and the duration the taxpayer commits to remain in this state.

Amendment 4

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- + (H) The overall economic impact in this state of the taxpayer’s project or business.
- + (I) The strategic importance of the taxpayer’s project or business to the state, region, or locality.
- + (J) The opportunity for future growth and expansion in this state by the taxpayer’s business.
- + (K) The extent to which the anticipated benefit to the state exceeds the projected benefit to the taxpayer from the tax credit.
- + (L) For a credit allocated beginning with the 2018–19 fiscal year, the training opportunities offered by the taxpayer to its employees.
- + (3) The written agreement entered into pursuant to paragraph (2) shall include:
 - + (A) Terms and conditions that include the taxable year or years for which the credit allocated shall be allowed, a minimum compensation level, and a minimum job retention period.
 - + (B) Provisions indicating whether the credit is to be allocated in full upon approval or in increments based on mutually agreed upon milestones when satisfactorily met by the taxpayer.
 - + (C) Provisions that allow the committee to recapture the credit, in whole or in part, if the taxpayer fails to fulfill the terms and conditions of the written agreement.
- + *(b) (1) For taxable years beginning on or after January 1, 2021, a qualified taxpayer, to the extent an amount allowable under this section exceeds the tax liability computed under this part for the taxable year, and after being credited against other amounts due, if any, may elect to be paid a refund from the Tax Relief and Refund Account. The amount refunded under this subdivision, if any, shall not exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year.*
- + *(2) To be eligible for a refund of the credit allowed by this section, the qualified taxpayer shall, upon request, provide necessary information, including certification from GO-Biz that the taxpayer is a qualified taxpayer, as determined by and in the form and manner prescribed by the Franchise Tax Board.*
- + *(3) Subdivision (f) shall apply if a qualified taxpayer does not elect to be paid a refund pursuant to this subdivision or if there are excess credits available after the refund is provided pursuant to this subdivision.*

+ (4) A qualified taxpayer that receives a refund pursuant to this
+ subdivision shall reinvest the refund into immobile capital
+ equipment that supports infrastructure improvements, expansion,
+ or developments for media production facilities in the state. A
+ qualified taxpayer shall not reinvest refunds for the improvement
+ of immobile capital equipment unless the improvements are made
+ under a project labor agreement and using a skilled and trained
+ workforce.

+ (5) For purposes of this subdivision, the following shall apply:

+ (A) "Qualified taxpayer" means a taxpayer that has created at
+ least 5,000 prevailing wage, full-time or full-time equivalent jobs
+ in the state each year for a period of 10 years.

+ (B) "Full-time equivalent" means the workload of the full-time
+ equivalent job is comparable to one year of full-time work. One
+ year of full-time work is measurable by the number of hours worked
+ in one year, or by total wages paid in one year for that industry
+ divided by the average annual salary.

+ (C) "Immobile capital equipment" means property of the type
+ defined in Section 1250(c) of the Internal Revenue Code.

+ (D) "Project labor agreement" has the same meaning as defined
+ in paragraph (1) of subdivision (b) of Section 2500 of the Public
+ Contract Code.

+ (E) "Skilled and trained workforce" has the same meaning as
+ provided in Chapter 2.9 (commencing with Section 2600) of Part
+ 1 of Division 2 of the Public Contract Code.

+ (6) (A) The Franchise Tax Board may prescribe any regulations
+ necessary or appropriate to carry out the purposes of this
+ subdivision, including any regulations to prevent improper claims
+ from being filed or improper payments from being made with
+ respect to the refund of the credit.

+ (B) The Franchise Tax Board may prescribe rules, guidelines,
+ procedures, or other guidance to carry out the purposes of this
+ subdivision.

+ (C) Chapter 3.5 (commencing with Section 11340) of Part 1 of
+ Division 3 of Title 2 of the Government Code shall not apply to
+ any regulation, rule, guideline, procedure, or other guidance
+ prescribed by the Franchise Tax Board pursuant to this
+ subdivision.

+ (b)

+ (c) For purposes of this section:

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- + (1) “Committee” means the California Competes Tax Credit Committee established pursuant to Section 18410.2.
- + (2) “GO-Biz” means the Governor’s Office of Business and Economic Development.
- + (e)
- + (d) For purposes of this section, GO-Biz shall do the following:
 - + (1) Give priority to a taxpayer whose project or business is located or proposed to be located in an area of high unemployment or poverty.
 - + (2) Negotiate with a taxpayer the terms and conditions of proposed written agreements that provide the credit allowed pursuant to this section to a taxpayer.
 - + (3) Provide the negotiated written agreement to the committee for its approval pursuant to Section 18410.2.
 - + (4) Inform the Franchise Tax Board of the terms and conditions of the written agreement upon approval of the written agreement by the committee.
 - + (5) Inform the Franchise Tax Board of any recapture, in whole or in part, of a previously allocated credit upon approval of the recapture by the committee.
 - + (6) Post on its ~~Internet Web site~~ *internet website* all of the following:
 - + (A) The name of each taxpayer allocated a credit pursuant to this section.
 - + (B) The estimated amount of the investment by each taxpayer.
 - + (C) The estimated number of jobs created or retained.
 - + (D) The amount of the credit allocated to the taxpayer.
 - + (E) The amount of the credit recaptured from the taxpayer, if applicable.
 - + (F) The primary location where the taxpayer has committed to increasing the net number of jobs or make investments. The primary location shall be listed by city or, in the case of unincorporated areas, by county.
 - + (G) Information that identifies each tax credit award that was given a priority for being located in a high unemployment or poverty area, pursuant to paragraph (1).
 - + (7) For allocation periods beginning with the 2018–19 fiscal year, when determining whether to enter into a written agreement with a taxpayer pursuant to this section, GO-Biz shall consider the extent to which the credit will influence the taxpayer’s ability,

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+ willingness, or both, to create jobs in this state that might not
+ otherwise be created in the state by the taxpayer or any other
+ taxpayer. GO-Biz may also consider other factors, including, but
+ not limited to, the following:

+ (A) The financial solvency of the taxpayer and the taxpayer’s
+ ability to finance its proposed expansion.

+ (B) The taxpayer’s current and prior compliance with federal
+ and state laws.

+ (C) Current and prior litigation involving the taxpayer.

+ (D) The reasonableness of the fee arrangement between the
+ taxpayer and any third party providing any services related to the
+ credit allowed pursuant to this section.

+ (E) Any other factors GO-Biz deems necessary to ensure that
+ the administration of the credit allowed pursuant to this section is
+ a model of accountability and transparency and that the effective
+ use of the limited amount of credit available is maximized.

+ ~~(d)~~

+ (e) For purposes of this section, the Franchise Tax Board shall
+ do all of the following:

+ (1) (A) Except as provided in subparagraph (B), review the
+ books and records of all taxpayers allocated a credit pursuant to
+ this section to ensure compliance with the terms and conditions
+ of the written agreement between the taxpayer and GO-Biz.

+ (B) In the case of a taxpayer that is a “small business,” as
+ defined in Section 17053.73, review the books and records of the
+ taxpayer allocated a credit pursuant to this section to ensure
+ compliance with the terms and conditions of the written agreement
+ between the taxpayer and GO-Biz when, in the sole discretion of
+ the Franchise Tax Board, a review of those books and records is
+ appropriate or necessary in the best interests of the state.

+ (2) Notwithstanding Section 19542, notify GO-Biz of a possible
+ breach of the written agreement by a taxpayer and provide detailed
+ information regarding the basis for that determination.

+ ~~(e)~~

+ (f) In the case where the credit allowed under this section
+ exceeds the “net tax,” as defined in Section 17039, for a taxable
+ year, the excess credit may be carried over to reduce the “net tax”
+ in the following taxable year, and succeeding five taxable years,
+ if necessary, until the credit has been exhausted.

+ ~~(f)~~

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+ (g) Any recapture, in whole or in part, of a credit approved by
+ the committee pursuant to Section 18410.2 shall be treated as a
+ mathematical error appearing on the return. Any amount of tax
+ resulting from that recapture shall be assessed by the Franchise
+ Tax Board in the same manner as provided by Section 19051. The
+ amount of tax resulting from the recapture shall be added to the
+ tax otherwise due by the taxpayer for the taxable year in which
+ the committee’s recapture determination occurred.

+ ~~(g)~~
+ (h) (1) The aggregate amount of credit that may be allocated
+ in any fiscal year pursuant to this section and Section 23689 shall
+ be an amount equal to the sum of subparagraphs (A), (B), and (C),
+ less the amount specified in subparagraphs (D) and (E):

+ (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
+ year, one hundred fifty million dollars (\$150,000,000) for the
+ 2014–15 fiscal year, two hundred million dollars (\$200,000,000)
+ for each fiscal year from 2015–16 to 2017–18, inclusive, and one
+ hundred eighty million dollars (\$180,000,000) for each fiscal year
+ from 2018–19 to 2022–23, inclusive.

+ (B) The unallocated credit amount, if any, from the preceding
+ fiscal year.

+ (C) The amount of any previously allocated credits that have
+ been recaptured.

+ (D) The amount estimated by the Director of Finance, in
+ consultation with the Franchise Tax Board and the California
+ Department of Tax and Fee Administration, to be necessary to
+ limit the aggregation of the estimated amount of exemptions
+ claimed pursuant to Section 6377.1 and of the amounts estimated
+ to be claimed pursuant to this section and Sections 17053.73,
+ 23626, and 23689 to no more than seven hundred fifty million
+ dollars (\$750,000,000) for either the current fiscal year or the next
+ fiscal year.

+ (i) The Director of Finance shall notify the Chairperson of the
+ Joint Legislative Budget Committee of the estimated annual
+ allocation authorized by this paragraph. Any allocation pursuant
+ to these provisions shall be made no sooner than 30 days after
+ written notification has been provided to the Chairperson of the
+ Joint Legislative Budget Committee and the chairpersons of the
+ committees of each house of the Legislature that consider
+ appropriations, or not sooner than whatever lesser time the

- + Chairperson of the Joint Legislative Budget Committee, or ~~his or~~
+ ~~her~~ *the chairperson's* designee, may determine.
- + (ii) In no event shall the amount estimated in this subparagraph
+ be less than zero dollars (\$0).
- + (E) (i) For the 2015–16 fiscal year and each fiscal year
+ thereafter, the amount of credit estimated by the Director of Finance
+ to be allowed to all qualified taxpayers for that fiscal year pursuant
+ to subparagraph (A) or subparagraph (B) of paragraph (1) of
+ subdivision (c) of Section 23636.
- + (ii) If the amount available per fiscal year pursuant to this section
+ and Section 23689 is less than the aggregate amount of credit
+ estimated by the Director of Finance to be allowed to qualified
+ taxpayers pursuant to subparagraph (A) or subparagraph (B) of
+ paragraph (1) of subdivision (c) of Section 23636, the aggregate
+ amount allowed pursuant to Section 23636 shall not be reduced
+ and, in addition to the reduction required by clause (i), the
+ aggregate amount of credit that may be allocated pursuant to this
+ section and Section 23689 for the next fiscal year shall be reduced
+ by the amount of that deficit.
- + (iii) It is the intent of the Legislature that the reductions specified
+ in this subparagraph of the aggregate amount of credit that may
+ be allocated pursuant to this section and Section 23689 shall
+ continue if the repeal dates of the credits allowed by this section
+ and Section 23689 are removed or extended.
- + (2) (A) In addition to the other amounts determined pursuant
+ to paragraph (1), the Director of Finance may increase the
+ aggregate amount of credit that may be allocated pursuant to this
+ section and Section 23689 by up to twenty-five million dollars
+ (\$25,000,000) per fiscal year through the 2022–23 fiscal year. The
+ amount of any increase made pursuant to this paragraph, when
+ combined with any increase made pursuant to paragraph (2) of
+ subdivision ~~(g)~~ (h) of Section 23689, shall not exceed twenty-five
+ million dollars (\$25,000,000) per fiscal year through the 2022–23
+ fiscal year.
- + (B) It is the intent of the Legislature that the Director of Finance
+ increase the aggregate amount under subparagraph (A) in order to
+ mitigate the reduction of the amount available due to the credit
+ allowed to all qualified taxpayers pursuant to subparagraph (A) or
+ (B) of paragraph (1) of subdivision (c) of Section 23636.

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+ (3) Each fiscal year through the 2017–18 fiscal year, 25 percent
+ of the aggregate amount of the credit that may be allocated pursuant
+ to this section and Section 23689 shall be reserved for small
+ business, as defined in Section 17053.73 or 23626.

+ (4) Each fiscal year, no more than 20 percent of the aggregate
+ amount of the credit that may be allocated pursuant to this section
+ shall be allocated to any one taxpayer.

+ ~~(h)~~

+ (i) GO-Biz may prescribe rules and regulations as necessary to
+ carry out the purposes of this section. Any rule or regulation
+ prescribed pursuant to this section may be by adoption of an
+ emergency regulation in accordance with Chapter 3.5 (commencing
+ with Section 11340) of Part 1 of Division 3 of Title 2 of the
+ Government Code.

+ ~~(i)~~

+ (j) A written agreement between GO-Biz and a taxpayer with
+ respect to the credit authorized by this section shall comply with
+ existing law on the date the agreement is executed.

+ ~~(j)~~

+ (k) (1) Upon the effective date of this section, the Department
+ of Finance shall estimate the total dollar amount of credits that
+ will be claimed under this section with respect to each fiscal year
+ from the 2013–14 fiscal year to the 2029–30 fiscal year, inclusive.

+ (2) The Franchise Tax Board shall annually provide to the Joint
+ Legislative Budget Committee, by no later than March 1, a report
+ of the total dollar amount of the credits claimed under this section
+ with respect to the relevant fiscal year. The report shall compare
+ the total dollar amount of credits claimed under this section with
+ respect to that fiscal year with the department’s estimate with
+ respect to that same fiscal year. If the total dollar amount of credits
+ claimed for the fiscal year is less than the estimate for that fiscal
+ year, the report shall identify options for increasing annual claims
+ of the credit so as to meet estimated amounts.

+ ~~(k)~~

+ (l) (1) Notwithstanding Section 19542, on or before October
+ 1, 2019, GO-Biz shall provide to the Legislative Analyst’s Office
+ a report on the credits allocated pursuant to this section for the
+ 2018–19 fiscal year. This report shall include the following:

+ (A) A detailed description of the methodology used to evaluate
+ applications and allocate credits as described by Section 8030 of

+ Title 10 of the California Code of Regulations, or any successor regulation.

+ (B) For each taxpayer that applies for a credit, a list that includes the applicant’s name, “aggregate employee compensation,” “aggregate investment,” and “cost-benefit ratio” as those terms are defined for purposes of, or used in, Section 8030 of Title 10 of the California Code of Regulations.

+ (C) For each written agreement recommended to the committee pursuant to this section, a detailed justification for GO-Biz’s decision to enter into a written agreement with the taxpayer.

+ (2) (A) On or before April 1, 2020, the Legislative Analyst’s Office shall provide to the Assembly Committee on Revenue and Taxation, the Senate Committee on Governance and Finance, the budget committees of both houses, and the public with a report evaluating the report required by paragraph (1).

+ (B) GO-Biz, the Franchise Tax Board, and all other relevant state agencies shall provide additional information, as specified by the Legislative Analyst’s Office, as needed to research the reports required by this subdivision.

+ (C) Any information received by the Legislative Analyst’s Office pursuant to this subdivision, that has not otherwise been made public, shall be considered confidential taxpayer information subject to Section 19542.

+ (D) The Legislative Analyst’s Office may publish statistics in conjunction with the reports required by this subdivision that are derived from information provided to the Legislative Analyst’s Office pursuant to this section, if the published statistics are aggregated to prevent the identification of particular taxpayers under this part.

+ ~~(t)~~

+ (m) This section is repealed on December 1, 2030.

+ *SEC. 2. Section 23689 of the Revenue and Taxation Code is amended to read:*

+ 23689. (a) (1) For each taxable year beginning on and after January 1, 2014, and before January 1, 2030, there shall be allowed as a credit against the “tax,” as defined in Section 23036, an amount as determined by the committee pursuant to paragraph (2) and approved pursuant to Section 18410.2.

+ (2) The credit under this section shall be allocated by GO-Biz with respect to the 2013–14 fiscal year through and including the

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- + 2022–23 fiscal year. The amount of credit allocated to a taxpayer
- + with respect to a fiscal year pursuant to this section shall be as set
- + forth in a written agreement between GO-Biz and the taxpayer and
- + shall be based on the following factors:
- + (A) The number of jobs the taxpayer will create or retain in this
- + state.
- + (B) The compensation paid or proposed to be paid by the
- + taxpayer to its employees, including wages and fringe benefits.
- + (C) The amount of investment in this state by the taxpayer.
- + (D) The extent of unemployment or poverty in the area
- + according to the United States Census in which the taxpayer’s
- + project or business is proposed or located.
- + (E) The incentives available to the taxpayer in this state,
- + including incentives from the state, local government, and other
- + entities.
- + (F) The incentives available to the taxpayer in other states.
- + (G) The duration of the proposed project and the duration the
- + taxpayer commits to remain in this state.
- + (H) The overall economic impact in this state of the taxpayer’s
- + project or business.
- + (I) The strategic importance of the taxpayer’s project or business
- + to the state, region, or locality.
- + (J) The opportunity for future growth and expansion in this state
- + by the taxpayer’s business.
- + (K) The extent to which the anticipated benefit to the state
- + exceeds the projected benefit to the taxpayer from the tax credit.
- + (L) For a credit allocated beginning with the 2018–19 fiscal
- + year, the training opportunities offered by the taxpayer to its
- + employees.
- + (3) The written agreement entered into pursuant to paragraph
- + (2) shall include:
- + (A) Terms and conditions that include the taxable year or years
- + for which the credit allocated shall be allowed, a minimum
- + compensation level, and a minimum job retention period.
- + (B) Provisions indicating whether the credit is to be allocated
- + in full upon approval or in increments based on mutually agreed
- + upon milestones when satisfactorily met by the taxpayer.
- + (C) Provisions that allow the committee to recapture the credit,
- + in whole or in part, if the taxpayer fails to fulfill the terms and
- + conditions of the written agreement.

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+ (b) (1) For taxable years beginning on or after January 1, 2021,
+ a qualified taxpayer, to the extent an amount allowable under this
+ section exceeds the tax liability computed under this part for the
+ taxable year, and after being credited against other amounts due,
+ if any, may elect to be paid a refund from the Tax Relief and Refund
+ Account. The amount refunded under this subdivision, if any, shall
+ not exceed the amount of total taxes imposed by the state and paid
+ by the qualified taxpayer during the taxable year.

+ (2) To be eligible for a refund of the credit allowed by this
+ section, the qualified taxpayer shall, upon request, provide
+ necessary information, including certification from GO-Biz that
+ the taxpayer is a qualified taxpayer, as determined by and in the
+ form and manner prescribed by the Franchise Tax Board.

+ (3) Subdivision (f) shall apply if a qualified taxpayer does not
+ elect to be paid a refund pursuant to this subdivision or if there
+ are excess credits available after the refund is provided pursuant
+ to this subdivision.

+ (4) A qualified taxpayer that receives a refund pursuant to this
+ subdivision shall reinvest the refund into immobile capital
+ equipment that supports infrastructure improvements, expansion,
+ or developments for media production facilities in the state. A
+ qualified taxpayer shall not reinvest refunds for the improvement
+ of immobile capital equipment unless the improvements are made
+ under a project labor agreement and using a skilled and trained
+ workforce.

+ (5) For purposes of this subdivision, the following shall apply:

+ (A) “Qualified taxpayer” means a taxpayer that has created at
+ least 5,000 prevailing wage, full-time or full-time equivalent jobs
+ in the state each year for a period of 10 years.

+ (B) “Full-time equivalent” means the workload of the full-time
+ equivalent job is comparable to one year of full-time work. One
+ year of full-time work is measurable by the number of hours worked
+ in one year, or by total wages paid in one year for that industry
+ divided by the average annual salary.

+ (C) “Immobile capital equipment” means property of the type
+ defined in Section 1250(c) of the Internal Revenue Code.

+ (D) “Project labor agreement” has the same meaning as defined
+ in paragraph (1) of subdivision (b) of Section 2500 of the Public
+ Contract Code.

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- + (E) “Skilled and trained workforce” has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
- + (6) (A) The Franchise Tax Board may prescribe any regulations necessary or appropriate to carry out the purposes of this subdivision, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to the refund of the credit.
- + (B) The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this subdivision.
- + (C) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any regulation, rule, guideline, procedure, or other guidance prescribed by the Franchise Tax Board pursuant to this subdivision.
- + ~~(b)~~
- + (c) For purposes of this section:
 - + (1) “Committee” means the California Competes Tax Credit Committee established pursuant to Section 18410.2.
 - + (2) “GO-Biz” means the Governor’s Office of Business and Economic Development.
- + ~~(e)~~
- + (d) For purposes of this section, GO-Biz shall do the following:
 - + (1) Give priority to a taxpayer whose project or business is located or proposed to be located in an area of high unemployment or poverty.
 - + (2) Negotiate with a taxpayer the terms and conditions of proposed written agreements that provide the credit allowed pursuant to this section to a taxpayer.
 - + (3) Provide the negotiated written agreement to the committee for its approval pursuant to Section 18410.2.
 - + (4) Inform the Franchise Tax Board of the terms and conditions of the written agreement upon approval of the written agreement by the committee.
 - + (5) Inform the Franchise Tax Board of any recapture, in whole or in part, of a previously allocated credit upon approval of the recapture by the committee.
 - + (6) Post on its ~~Internet Web site~~ *internet website* all of the following:

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- + (A) The name of each taxpayer allocated a credit pursuant to this section.
- + (B) The estimated amount of the investment by each taxpayer.
- + (C) The estimated number of jobs created or retained.
- + (D) The amount of the credit allocated to the taxpayer.
- + (E) The amount of the credit recaptured from the taxpayer, if applicable.
- + (F) The primary location where the taxpayer has committed to increasing the net number of jobs or make investments. The primary location shall be listed by city or, in the case of unincorporated areas, by county.
- + (G) Information that identifies each tax credit award that was given a priority for being located in a high unemployment or poverty area, pursuant to paragraph (1).
- + (7) For allocation periods beginning with the 2018–19 fiscal year, when determining whether to enter into a written agreement with a taxpayer pursuant to this section, GO-Biz shall consider the extent to which the credit will influence the taxpayer’s ability, willingness, or both, to create jobs in this state that might not otherwise be created in the state by the taxpayer or any other taxpayer. GO-Biz may also consider other factors, including, but not limited to, the following:
 - + (A) The financial solvency of the taxpayer and the taxpayer’s ability to finance its proposed expansion.
 - + (B) The taxpayer’s current and prior compliance with federal and state laws.
 - + (C) Current and prior litigation involving the taxpayer.
 - + (D) The reasonableness of the fee arrangement between the taxpayer and any third party providing any services related to the credit allowed pursuant to this section.
 - + (E) Any other factors GO-Biz deems necessary to ensure that the administration of the credit allowed pursuant to this section is a model of accountability and transparency and that the effective use of the limited amount of credit available is maximized.
 - + ~~(d)~~
 - + (e) For purposes of this section, the Franchise Tax Board shall do all of the following:
 - + (1) (A) Except as provided in subparagraph (B), review the books and records of all taxpayers allocated a credit pursuant to

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- + this section to ensure compliance with the terms and conditions
- + of the written agreement between the taxpayer and GO-Biz.
- + (B) In the case of a taxpayer that is a “small business,” as
- + defined in Section 23626, review the books and records of the
- + taxpayer allocated a credit pursuant to this section to ensure
- + compliance with the terms and conditions of the written agreement
- + between the taxpayer and GO-Biz when, in the sole discretion of
- + the Franchise Tax Board, a review of those books and records is
- + appropriate or necessary in the best interests of the state.
- + (2) Notwithstanding Section 19542, notify GO-Biz of a possible
- + breach of the written agreement by a taxpayer and provide detailed
- + information regarding the basis for that determination.
- + (e)
- + (f) In the case where the credit allowed under this section
- + exceeds the “tax,” as defined in Section 23036, for a taxable year,
- + the excess credit may be carried over to reduce the “tax” in the
- + following taxable year, and succeeding five taxable years, if
- + necessary, until the credit has been exhausted.
- + (f)
- + (g) Any recapture, in whole or in part, of a credit approved by
- + the committee pursuant to Section 18410.2 shall be treated as a
- + mathematical error appearing on the return. Any amount of tax
- + resulting from that recapture shall be assessed by the Franchise
- + Tax Board in the same manner as provided by Section 19051. The
- + amount of tax resulting from the recapture shall be added to the
- + tax otherwise due by the taxpayer for the taxable year in which
- + the committee’s recapture determination occurred.
- + (g)
- + (h) (1) The aggregate amount of credit that may be allocated
- + in any fiscal year pursuant to this section and Section 17059.2 shall
- + be an amount equal to the sum of subparagraphs (A), (B), and (C),
- + less the amount specified in subparagraphs (D) and (E):
- + (A) Thirty million dollars (\$30,000,000) for the 2013–14 fiscal
- + year, one hundred fifty million dollars (\$150,000,000) for the
- + 2014–15 fiscal year, two hundred million dollars (\$200,000,000)
- + for each fiscal year from 2015–16 to 2017–18, inclusive, and one
- + hundred eighty million dollars (\$180,000,000) for each fiscal year
- + from 2018–19 to 2022–23, inclusive.
- + (B) The unallocated credit amount, if any, from the preceding
- + fiscal year.

+ (C) The amount of any previously allocated credits that have
+ been recaptured.

+ (D) The amount estimated by the Director of Finance, in
+ consultation with the Franchise Tax Board and the California
+ Department of Tax and Fee Administration, to be necessary to
+ limit the aggregation of the estimated amount of exemptions
+ claimed pursuant to Section 6377.1 and of the amounts estimated
+ to be claimed pursuant to this section and Sections 17053.73,
+ 17059.2, and 23626 to no more than seven hundred fifty million
+ dollars (\$750,000,000) for either the current fiscal year or the next
+ fiscal year.

+ (i) The Director of Finance shall notify the Chairperson of the
+ Joint Legislative Budget Committee of the estimated annual
+ allocation authorized by this paragraph. Any allocation pursuant
+ to these provisions shall be made no sooner than 30 days after
+ written notification has been provided to the Chairperson of the
+ Joint Legislative Budget Committee and the chairpersons of the
+ committees of each house of the Legislature that consider
+ appropriations, or not sooner than whatever lesser time the
+ Chairperson of the Joint Legislative Budget Committee, or ~~his or~~
+ ~~her~~ *the chairperson's* designee, may determine.

+ (ii) In no event shall the amount estimated in this subparagraph
+ be less than zero dollars (\$0).

+ (E) (i) For the 2015–16 fiscal year and each fiscal year
+ thereafter, the amount of credit estimated by the Director of Finance
+ to be allowed to all qualified taxpayers for that fiscal year pursuant
+ to subparagraph (A) or subparagraph (B) of paragraph (1) of
+ subdivision (c) of Section 23636.

+ (ii) If the amount available per fiscal year pursuant to this section
+ and Section 17059.2 is less than the aggregate amount of credit
+ estimated by the Director of Finance to be allowed to qualified
+ taxpayers pursuant to subparagraph (A) or subparagraph (B) of
+ paragraph (1) of subdivision (c) of Section 23636, the aggregate
+ amount allowed pursuant to Section 23636 shall not be reduced
+ and, in addition to the reduction required by clause (i), the
+ aggregate amount of credit that may be allocated pursuant to this
+ section and Section 17059.2 for the next fiscal year shall be reduced
+ by the amount of that deficit.

+ (iii) It is the intent of the Legislature that the reductions specified
+ in this subparagraph of the aggregate amount of credit that may

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+ be allocated pursuant to this section and Section 17059.2 shall
+ continue if the repeal dates of the credits allowed by this section
+ and Section 17059.2 are removed or extended.

+ (2) (A) In addition to the other amounts determined pursuant
+ to paragraph (1), the Director of Finance may increase the
+ aggregate amount of credit that may be allocated pursuant to this
+ section and Section 17059.2 by up to twenty-five million dollars
+ (\$25,000,000) per fiscal year through the 2022–23 fiscal year. The
+ amount of any increase made pursuant to this paragraph, when
+ combined with any increase made pursuant to paragraph (2) of
+ subdivision ~~(g)~~ (h) of Section 17059.2, shall not exceed twenty-five
+ million dollars (\$25,000,000) per fiscal year through the 2022–23
+ fiscal year.

+ (B) It is the intent of the Legislature that the Director of Finance
+ increase the aggregate amount under subparagraph (A) in order to
+ mitigate the reduction of the amount available due to the credit
+ allowed to all qualified taxpayers pursuant to subparagraph (A) or
+ (B) of paragraph (1) of subdivision (c) of Section 23636.

+ (3) Each fiscal year through the 2017–18 fiscal year, 25 percent
+ of the aggregate amount of the credit that may be allocated pursuant
+ to this section and Section 17059.2 shall be reserved for “small
+ business,” as defined in Section 17053.73 or 23626.

+ (4) Each fiscal year, no more than 20 percent of the aggregate
+ amount of the credit that may be allocated pursuant to this section
+ shall be allocated to any one taxpayer.

+ ~~(h)~~

+ (i) GO-Biz may prescribe rules and regulations as necessary to
+ carry out the purposes of this section. Any rule or regulation
+ prescribed pursuant to this section may be by adoption of an
+ emergency regulation in accordance with Chapter 3.5 (commencing
+ with Section 11340) of Part 1 of Division 3 of Title 2 of the
+ Government Code.

+ ~~(i)~~

+ (j) (1) A written agreement between GO-Biz and a taxpayer
+ with respect to the credit authorized by this section shall not
+ restrict, broaden, or otherwise alter the ability of the taxpayer to
+ assign that credit or any portion thereof in accordance with Section
+ 23663.

+ (2) A written agreement between GO-Biz and a taxpayer with
+ respect to the credit authorized by this section must comply with
+ existing law on the date the agreement is executed.

+ ~~(j)~~
+ (k) (1) Upon the effective date of this section, the Department
+ of Finance shall estimate the total dollar amount of credits that
+ will be claimed under this section with respect to each fiscal year
+ from the 2013–14 fiscal year to the 2029–30 fiscal year, inclusive.

+ (2) The Franchise Tax Board shall annually provide to the Joint
+ Legislative Budget Committee, by no later than March 1, a report
+ of the total dollar amount of the credits claimed under this section
+ with respect to the relevant fiscal year. The report shall compare
+ the total dollar amount of credits claimed under this section with
+ respect to that fiscal year with the department’s estimate with
+ respect to that same fiscal year. If the total dollar amount of credits
+ claimed for the fiscal year is less than the estimate for that fiscal
+ year, the report shall identify options for increasing annual claims
+ of the credit so as to meet estimated amounts.

+ ~~(k)~~
+ (l) (1) Notwithstanding Section 19542, on or before October
+ 1, 2019, GO-Biz shall provide to the Legislative Analyst’s Office
+ a report on the credits allocated pursuant to this section for the
+ 2018–19 fiscal year. This report shall include the following:

+ (A) A detailed description of the methodology used to evaluate
+ applications and allocate credits as described by Section 8030 of
+ Title 10 of the California Code of Regulations, or any successor
+ regulation.

+ (B) For each taxpayer that applies for a credit, a list that includes
+ the applicant’s name, “aggregate employee compensation,”
+ “aggregate investment,” and “cost-benefit ratio” as those terms
+ are defined for purposes of, or used in, Section 8030 of Title 10
+ of the California Code of Regulations.

+ (C) For each written agreement recommended to the committee
+ pursuant to this section, a detailed justification for GO-Biz’s
+ decision to enter into a written agreement with the taxpayer.

+ (2) (A) On or before April 1, 2020, the Legislative Analyst’s
+ Office shall provide to the Assembly Committee on Revenue and
+ Taxation, the Senate Committee on Governance and Finance, the
+ budget committees of both houses, and the public with a report
+ evaluating the report required by paragraph (1).

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+ (B) GO-Biz, the Franchise Tax Board, and all other relevant
+ state agencies shall provide additional information, as specified
+ by the Legislative Analyst’s Office, as needed to research the
+ reports required by this subdivision.

+ (C) Any information received by the Legislative Analyst’s
+ Office pursuant to this subdivision, that has not otherwise been
+ made public, shall be considered confidential taxpayer information
+ subject to Section 19542.

+ (D) The Legislative Analyst’s Office may publish statistics in
+ conjunction with the reports required by this subdivision that are
+ derived from information provided to the Legislative Analyst’s
+ Office pursuant to this section, if the published statistics are
+ aggregated to prevent the identification of particular taxpayers
+ under this part.

+ (f)

+ (m) This section is repealed on December 1, 2030.

Page 4

1 SECTION 1. ~~(a) The Legislature finds and declares:~~

Amendment 5

3 ~~(1) In November 2016, California voters passed Proposition 64,~~
4 ~~the Control, Regulate and Tax Adult Use of Marijuana Act,~~
5 ~~authorizing recreational use of marijuana subject to specified limits.~~
6 ~~Medicinal cannabis use has been legal under California law since~~
7 ~~1996 with the passage of Proposition 215, the Compassionate Use~~
8 ~~Act of 1996.~~

10 ~~(2) Since 1996, a network of producers, distributors, and~~
11 ~~dispensaries have developed in California to serve the needs of~~
12 ~~the medical cannabis community. All of these businesses are~~
13 ~~expected to expand, and new businesses are expected to join them,~~
14 ~~in order to serve recreational cannabis users.~~

16 ~~(3) Cannabis remains illegal under federal law. The United~~
17 ~~States Drug Enforcement Administration classifies cannabis as a~~
18 ~~Schedule I drug. As a result, the majority of financial institutions~~
19 ~~that take deposits, including banks, thrifts, and credit unions, do~~
20 ~~not serve cannabis businesses. This status precludes~~
21 ~~cannabis-related businesses from depositing income in, or engaging~~
22 ~~in other banking-related activities with, federally insured and~~
1 ~~regulated financial institutions and from using a federal~~
2 ~~clearinghouse to process their payments.~~

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4 ~~(4) Since most financial institutions will not serve cannabis~~
5 ~~businesses because of the conflict of federal law with state law,~~
6 ~~these businesses are unable to open and use checking accounts,~~

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Page 5 7 ~~make or receive electronic payments, or accept credit or debit~~
8 ~~cards.~~
10 ~~(5) While income from the sale of cannabis products is~~
11 ~~considered ill-gotten gains by the federal government, that income~~
12 ~~is still taxable. The Internal Revenue Service specifically states in~~
13 ~~Publication 525, Taxable and Nontaxable Income, that “Income~~
14 ~~from illegal activities, such as money from dealing illegal drugs;~~
15 ~~must be included in your income on Form 1040, line 21, or on~~
16 ~~Schedule C or Schedule C-EZ (Form 1040) if from your~~
17 ~~self-employment activity.”~~
19 ~~(6) The need for banking services for the cannabis industry is~~
20 ~~at an all-time high, given that the industry is now expected to~~
21 ~~generate more than \$8,000,000,000 in revenue annually.~~
23 ~~(7) The lack of banking services has created both regulatory~~
24 ~~and public safety issues. State and local governments must be able~~
25 ~~to audit and perform accounting and other accountability functions~~
26 ~~affecting cannabis-related businesses. This is made significantly~~
27 ~~more difficult when the majority of transactions are completed~~
28 ~~with cash.~~
30 ~~(8) With financial services unavailable to cannabis businesses,~~
31 ~~these businesses are less able to pay taxes and follow California~~
32 ~~regulations governing cannabis.~~
34 ~~(9) Additionally, the lack of access to financial services has~~
35 ~~created public safety issues for businesses that need to pay high~~
36 ~~security costs to safeguard their income and their employees, who~~
37 ~~risk being robbed when managing and transporting cash.~~
39 ~~(10) California voters have spoken in support of the new~~
40 ~~cannabis laws. Without a change in law regarding financial~~
Page 6 1 ~~services, businesses providing services that are lawful under state~~
2 ~~law may elect to remain underground and not become regulated,~~
3 ~~tax-paying California businesses, as the voters intended.~~
5 ~~(11) In furtherance of the will of the voters, the California~~
6 ~~government has a responsibility to enact appropriate implementing~~
7 ~~legislation for Proposition 64. The current conflict with federal~~
8 ~~law creates a significant problem requiring legislative attention.~~
9 ~~The state has a duty to provide a mechanism to help these lawful~~
10 ~~businesses to gain access to banking services that is consistent~~
11 ~~with the will of California voters.~~
12 ~~(b) It is the intent of the Legislature that banks and other~~
13 ~~financial institutions support and maintain good faith relationships~~

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Page 6 14 ~~with banks doing business with properly licensed cannabis~~
15 ~~businesses in this state.~~
16 ~~SEC. 2. Section 99 of the Financial Code is amended to read:~~
17 ~~99. This division, Division 1.1 (commencing with Section~~
18 ~~1000), Division 1.2 (commencing with Section 2000), Division~~
19 ~~1.6 (commencing with Section 4800), Division 2 (commencing~~
20 ~~with Section 5000), Division 2.5 (commencing with Section~~
21 ~~11000), Division 5 (commencing with Section 14000), Division~~
22 ~~7 (commencing with Section 18000), and Division 15 (commencing~~
23 ~~with Section 31000) shall be known, and may be cited, as the~~
24 ~~“Financial Institutions Law.”~~
25 ~~SEC. 3. Section 185 of the Financial Code is amended to read:~~
26 ~~185. “Licensee” has the following meanings:~~
27 ~~(a) Any bank authorized by the commissioner pursuant to~~
28 ~~Section 1042 to transact banking or trust business.~~
29 ~~(b) Any industrial bank authorized by the commissioner pursuant~~
30 ~~to Section 1042 to transact industrial banking business.~~
31 ~~(c) Any trust company authorized by the commissioner pursuant~~
32 ~~to Section 1042 to transact trust business.~~
33 ~~(d) Any foreign (other nation) bank that is licensed under Article~~
34 ~~2 (commencing with Section 1780) of Chapter 20 or under Article~~
35 ~~3 (commencing with Section 1800) of Chapter 20.~~
36 ~~(e) Any person licensed by the commissioner as a money~~
37 ~~transmitter pursuant to Division 1.2 (commencing with Section~~
38 ~~2000):~~
Page 7 1 ~~(f) Any person authorized by the commissioner to conduct the~~
2 ~~business of a savings association pursuant to Division 2~~
3 ~~(commencing with Section 5000):~~
4 ~~(g) Any credit union authorized by the commissioner to conduct~~
5 ~~business pursuant to Section 14154.~~
6 ~~(h) Any foreign (other state) credit union licensed by the~~
7 ~~commissioner to conduct business pursuant to Chapter 11~~
8 ~~(commencing with Section 16000) of Division 5.~~
9 ~~(i) Any foreign (other nation) credit union licensed by the~~
10 ~~commissioner to conduct business pursuant to Chapter 12~~
11 ~~(commencing with Section 16500) of Division 5.~~
12 ~~(j) Any industrial loan company authorized by the commissioner~~
13 ~~to conduct insurance premium finance business pursuant to~~
14 ~~Division 7 (commencing with Section 18000):~~

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Page 7 15 ~~(k) Any corporation licensed by the commissioner as a business~~
16 ~~and industrial development corporation pursuant to Section 31154.~~
17 ~~(l) Any cannabis limited charter bank or credit union authorized~~
18 ~~by the commissioner to conduct banking services pursuant to~~
19 ~~Division 2.5 (commencing with Section 11000).~~
20 SEC. 4. Section 301 of the Financial Code is amended to read:
21 301. (a) This chapter is applicable to this division, Division
22 1.1 (commencing with Section 1000), Division 1.2 (commencing
23 with Section 2000), Division 1.6 (commencing with Section 4800),
24 Division 2.5 (commencing with Section 11000), Division 5
25 (commencing with Section 14000), Division 7 (commencing with
26 Section 18000), and Division 15 (commencing with Section
27 31000).
28 (b) Except as provided in subdivision (c), this article, and
29 Articles 2 (commencing with Section 320) and 3 (commencing
30 with Section 350) are applicable to the administration of laws by
31 the Division of Corporations.
32 (c) Sections 329, 330, 332, 335, 336, 357, 378, 379, and 381
33 are not applicable to the Division of Corporations.
34 SEC. 5. Section 329 of the Financial Code is amended to read:
35 329. (a) For purposes of this section, the following definitions
36 apply:
37 (1) "Applicable law" means:
38 (A) With respect to any bank, Division 1.6 (commencing with
39 Section 4800), and any of the following provisions:
40 (i) Article 6 (commencing with Section 405) of Chapter 3.
Page 8 1 (ii) Article 3 (commencing with Section 1130) of Chapter 5 of
2 Division 1.1.
3 (iii) Chapter 6 (commencing with Section 1200) of Division
4 1.1.
5 (iv) Chapter 10 (commencing with Section 1320) of Division
6 1.1.
7 (v) Chapter 14 (commencing with Section 1460) of Division
8 1.1.
9 (vi) Article 1 (commencing with Section 1530) of Chapter 15
10 of Division 1.1.
11 (vii) Chapter 16 (commencing with Section 1550) of Division
12 1.1.
13 (viii) Chapter 20 (commencing with Section 1750) of Division
14 1.1.

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- Page 8 15 ~~(ix) Section 456.~~
- 16 ~~(x) Section 457.~~
- 17 ~~(xi) Section 459.~~
- 18 ~~(xii) Section 460.~~
- 19 ~~(xiii) Section 461.~~
- 20 ~~(xiv) Section 1331.~~
- 21 ~~(xv) Chapter 21 (commencing with Section 1850) of Division~~
- 22 ~~1.1.~~
- 23 ~~(xvi) Chapter 18 (commencing with Section 1660) of Division~~
- 24 ~~1.1.~~
- 25 ~~(xvii) Chapter 19 (commencing with Section 1670) of Division~~
- 26 ~~1.1.~~
- 27 ~~(B) With respect to any savings association, any provision of~~
- 28 ~~Division 1.6 (commencing with Section 4800) and Division 2~~
- 29 ~~(commencing with Section 5000).~~
- 30 ~~(C) With respect to any insurance premium finance agency, any~~
- 31 ~~provision of Division 7 (commencing with Section 18000).~~
- 32 ~~(D) With respect to any business and industrial development~~
- 33 ~~corporation, any provision of Division 15 (commencing with~~
- 34 ~~Section 31000).~~
- 35 ~~(E) With respect to any credit union, any of the following~~
- 36 ~~provisions:~~
- 37 ~~(i) Section 14252.~~
- 38 ~~(ii) Section 14253.~~
- 39 ~~(iii) Section 14255.~~
- Page 9 1 ~~(iv) Article 4 (commencing with Section 14350) of Chapter 3~~
- 2 ~~of Division 5.~~
- 3 ~~(v) Section 14401.~~
- 4 ~~(vi) Section 14404.~~
- 5 ~~(vii) Section 14408, only as that section applies to gifts to~~
- 6 ~~directors, volunteers, and employees, and the related family or~~
- 7 ~~business interests of the directors, volunteers, and employees.~~
- 8 ~~(viii) Section 14409.~~
- 9 ~~(ix) Section 14410.~~
- 10 ~~(x) Article 5 (commencing with Section 14600) of Chapter 4~~
- 11 ~~of Division 5.~~
- 12 ~~(xi) Article 6 (commencing with Section 14650) of Chapter 4~~
- 13 ~~of Division 5, excluding subdivision (a) of Section 14651.~~
- 14 ~~(xii) Section 14803.~~
- 15 ~~(xiii) Section 14851.~~

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Page 9 16 ~~(xiv) Section 14858.~~
 17 ~~(xv) Section 14860.~~
 18 ~~(xvi) Section 14861.~~
 19 ~~(xvii) Section 14863.~~
 20 ~~(F) With respect to any money transmitter, any provision of~~
 21 ~~Division 1.2 (commencing with Section 2000).~~
 22 ~~(G) With respect to any cannabis limited charter bank or credit~~
 23 ~~union, any provision of Division 2.5 (commencing with Section~~
 24 ~~11000).~~
 25 ~~(2) "Licensee" means any bank, savings association, credit~~
 26 ~~union, trust company, cannabis limited charter bank or credit union,~~
 27 ~~money transmitter, insurance premium finance agency, or business~~
 28 ~~and industrial development corporation that is authorized by the~~
 29 ~~commissioner to conduct business in this state.~~
 30 ~~(b) Notwithstanding any other provision of this code that applies~~
 31 ~~to a licensee or a subsidiary of a licensee, after notice and an~~
 32 ~~opportunity to be heard, the commissioner may, by order that shall~~
 33 ~~include findings of fact which incorporates a determination made~~
 34 ~~in accordance with subdivision (c), levy civil penalties against any~~
 35 ~~licensee or any subsidiary of a licensee who has violated any~~
 36 ~~provision of applicable law, any order issued by the commissioner,~~
 37 ~~any written agreement between the commissioner and the licensee~~
 38 ~~or subsidiary of the licensee, or any condition of any approval~~
 39 ~~issued by the commissioner. The commissioner shall have the sole~~
 Page 10 1 ~~authority to bring any action with respect to a violation of~~
 2 ~~applicable law subject to a penalty imposed under this section.~~
 3 ~~Except as provided in paragraphs (1) and (2), any penalty~~
 4 ~~imposed by the commissioner may not exceed one thousand dollars~~
 5 ~~(\$1,000) per day, provided that the aggregate penalty of all offenses~~
 6 ~~in any one action against any licensee or subsidiary of a licensee~~
 7 ~~shall not exceed fifty thousand dollars (\$50,000).~~
 8 ~~(1) If the commissioner determines that any licensee or~~
 9 ~~subsidiary of the licensee has recklessly violated any applicable~~
 10 ~~law, any order issued by the commissioner, any provision of any~~
 11 ~~written agreement between the commissioner and the licensee or~~
 12 ~~subsidiary, or any condition of any approval issued by the~~
 13 ~~commissioner, the commissioner may impose a penalty not to~~
 14 ~~exceed five thousand dollars (\$5,000) per day, provided that the~~
 15 ~~aggregate penalty of all offenses in an action against any licensee~~

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Page 10 16 or subsidiary of a licensee shall not exceed seventy-five thousand
17 dollars (\$75,000).

18 ~~(2) If the commissioner determines that any licensee or~~
19 ~~subsidiary of the licensee has knowingly violated any applicable~~
20 ~~law, any order issued by the commissioner, any provision of any~~
21 ~~written agreement between the commissioner and the licensee or~~
22 ~~subsidiary, or any condition of any approval issued by the~~
23 ~~commissioner, the commissioner may impose a penalty not to~~
24 ~~exceed ten thousand dollars (\$10,000) per day, provided that the~~
25 ~~aggregate penalty of all offenses in an action against any licensee~~
26 ~~or subsidiary of a licensee shall not exceed 1 percent of the total~~
27 ~~assets of the licensee or subsidiary of a licensee subject to the~~
28 ~~penalty.~~

29 ~~(e) Nothing in this section shall be construed to impair or impede~~
30 ~~the commissioner from pursuing any other administrative action~~
31 ~~allowed by law.~~

32 ~~(d) Nothing in this section shall be construed to impair or impede~~
33 ~~the commissioner from bringing an action in court to enforce any~~
34 ~~law or order the commissioner has issued, including orders issued~~
35 ~~under this section. Nothing in this section shall be construed to~~
36 ~~impair or impede the commissioner from seeking any other~~
37 ~~damages or injunction allowed by law.~~

38 ~~(e) In determining the amount and the appropriateness of~~
39 ~~initiating a civil money penalty under subdivision (b), the~~
40 ~~commissioner shall consider all of the following:~~

Page 11 1 ~~(1) Evidence that the violation or practice or breach of duty was~~
2 ~~intentional or was committed with a disregard of the law or with~~
3 ~~a disregard of the consequences to the institution.~~

4 ~~(2) The duration and frequency of the violations, practices, or~~
5 ~~breaches of duties.~~

6 ~~(3) The continuation of the violations, practices, or breaches of~~
7 ~~duty after the licensee or subsidiary of the licensee was notified;~~
8 ~~or, alternatively, its immediate cessation and correction.~~

9 ~~(4) The failure to cooperate with the commissioner in effecting~~
10 ~~early resolution of the problem.~~

11 ~~(5) Evidence of concealment of the violation, practice, or breach~~
12 ~~of duty or, alternatively, voluntary disclosure of the violation;~~
13 ~~practice, or breach of duty.~~

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Page 11 14 ~~(6) Any threat of loss, actual loss, or other harm to the~~
15 ~~institution, including harm to the public confidence in the~~
16 ~~institution, and the degree of that harm.~~
17 ~~(7) Evidence that a licensee or subsidiary of a licensee received~~
18 ~~financial gain or other benefit as a result of the violation, practice,~~
19 ~~or breach of duty.~~
20 ~~(8) Evidence of any restitution paid by a licensee or subsidiary~~
21 ~~of a licensee of losses resulting from the violation, practice, or~~
22 ~~breach of duty.~~
23 ~~(9) History of prior violations, practices, or breaches of duty,~~
24 ~~particularly where they are similar to the actions under~~
25 ~~consideration.~~
26 ~~(10) Previous criticism of the institution for similar actions.~~
27 ~~(11) Presence or absence of a compliance program and its~~
28 ~~effectiveness.~~
29 ~~(12) Tendency to engage in violations of law, unsafe or unsound~~
30 ~~financial institutions practices, or breaches of duties.~~
31 ~~(13) The existence of agreements, commitments, orders, or~~
32 ~~conditions imposed in writing intended to prevent the violation,~~
33 ~~practice, or breach of duty.~~
34 ~~(14) Whether the violation, practice, or breach of duty causes~~
35 ~~quantifiable, economic benefit or loss to the licensee or the~~
36 ~~subsidiary of the licensee. In those cases, removal of the benefit~~
37 ~~or recompense of the loss usually will be insufficient, by itself, to~~
38 ~~promote compliance with the applicable law, order, or written~~
39 ~~agreement. The penalty amount should reflect a remedial purpose~~
40 ~~and should provide a deterrent to future misconduct.~~
Page 12 1 ~~(15) Other factors as the commissioner may, in their opinion,~~
2 ~~consider relevant to assessing the penalty or establishing the~~
3 ~~amount of the penalty.~~
4 ~~(f) The amounts collected under this section shall be deposited~~
5 ~~in the appropriate fund of the department. For purposes of this~~
6 ~~subdivision, the term “appropriate fund” means the fund to which~~
7 ~~the annual assessments of fined licensees, or the parent licensee~~
8 ~~of the fined subsidiary, are credited.~~
9 ~~SEC. 6. Section 1003 of the Financial Code is amended to read:~~
10 ~~1003. Except where explicitly stated or the context provides~~
11 ~~otherwise, this division is applicable to the following:~~
12 ~~(a) All corporations engaging in commercial banking, industrial~~
13 ~~banking, or the trust business.~~

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Page 12 14 ~~(b) All national banking associations authorized to transact
15 business in this state to the extent that the provisions of this division
16 are not inconsistent with and do not infringe paramount federal
17 laws governing national banking associations.~~

18 ~~(c) All cannabis limited charter banks that elect to form under
19 this division to the extent that the provisions of this division are
20 not inconsistent with Division 2.5 (commencing with Section
21 11000).~~

22 ~~(d) All other corporations that subject themselves to the special
23 provisions and sections of this division.~~

24 ~~(e) All other persons, associations, copartnerships, or
25 corporations who, by violating any of its provisions, become
26 subject to the penalties provided for in this division.~~

27 ~~SEC. 7. Section 1100 of the Financial Code is amended to read:~~

28 ~~1100. The articles of each bank shall contain the applicable
29 one of the following statements:~~

30 ~~(a) In case the bank is, or is proposed to be, a commercial bank
31 not authorized to engage in trust business, that the purpose of the
32 corporation is to engage in commercial banking business and any
33 other lawful activities which are not, by applicable laws or
34 regulations, prohibited to a commercial bank.~~

35 ~~(b) In case the bank is, or is proposed to be, a commercial bank
36 authorized to engage in trust business, that the purpose of the
37 corporation is to engage in commercial banking business and trust
38 business and any other lawful activities which are not, by
39 applicable laws or regulations, prohibited to a commercial bank
40 authorized to engage in trust business.~~

Page 13 1 ~~(c) In case the bank is, or is proposed to be, an industrial bank
2 not authorized to engage in trust business, that the purpose of the
3 corporation is to engage in industrial banking business and any
4 other lawful activities which are not, by applicable laws or
5 regulations, prohibited to an industrial bank.~~

6 ~~(d) In case the bank is, or is proposed to be, an industrial bank
7 authorized to engage in trust business, that the purpose of the
8 corporation is to engage in industrial banking business and trust
9 business and any other lawful activities which are not, by
10 applicable laws or regulations, prohibited to an industrial bank
11 authorized to engage in trust business.~~

12 ~~(e) In case the bank is, or is proposed to be, a trust company
13 (other than a commercial bank authorized to engage in trust~~

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Page 13 14 business), that the purpose of the corporation is to engage in trust
15 business and any other lawful activities which are not, by
16 applicable laws or regulations, prohibited to a trust company.

17 (f) In case the bank is, or is proposed to be, a cannabis limited
18 charter bank, that the purpose of the corporation is to engage in
19 the business of providing limited banking services to cannabis
20 businesses under Division 2.5 (commencing with Section 11000).
21 This subdivision shall become inoperative if Division 2.5
22 (commencing with Section 11000) becomes inoperative pursuant
23 to Section 11101.

24 SEC. 8. ~~Division 2.5 (commencing with Section 11000) is~~
25 ~~added to the Financial Code, to read:~~

26
27 ~~DIVISION 2.5. CANNABIS LIMITED CHARTER BANKING~~
28 ~~AND CREDIT UNION LAW~~

+
30 ~~CHAPTER 1. GENERAL PROVISIONS~~

+
32 ~~Article 1. Short Title and Construction~~

+
34 ~~11000. This division is known, and may be cited, as the~~
35 ~~Cannabis Limited Charter Banking and Credit Union Law.~~

36
37 ~~Article 2. Definitions~~

+
39 ~~11005. For purposes of this chapter:~~

Page 14 1 (a) ~~“Applicant” means a person or entity that submits an~~
2 ~~application to be licensed by the state to provide banking services~~
3 ~~to a cannabis business pursuant to this division.~~

4 (b) ~~“Banking services” means the provision of depository~~
5 ~~services with respect to cash or other funds and the issuance and~~
6 ~~acceptance of special purpose checks, including the acceptance~~
7 ~~and maintenance of deposit proceeds, consistent with the~~
8 ~~requirements and limitations provided by this chapter.~~

9 (c) ~~“Board” means the Cannabis Limited Charter Bank and~~
10 ~~Credit Union Advisory Board.~~

11 (d) ~~“Cannabis business” means a person licensed to engage in~~
12 ~~commercial cannabis activity under Division 10 (commencing~~
13 ~~with Section 26000) of the Business and Professions Code. The~~
14 ~~term “cannabis business” also includes an ancillary business or~~

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Page 14 15 profession that serves a person licensed to engage in commercial
 16 cannabis activity under Division 10 (commencing with Section
 17 26000) of the Business and Professions Code.
 18 (e) “Cannabis limited charter bank or credit union” means a
 19 person that receives a license following the approval of an
 20 application pursuant to Chapter 3 (commencing with Section
 21 11040);
 22 (f) “Commissioner” means the Commissioner of Business
 23 Oversight.
 24 (g) “Department” means the Department of Business Oversight.
 25 (h) “Licensee” means a cannabis limited charter bank or credit
 26 union.

CHAPTER 2. ADMINISTRATION

+
 30 **Article 1. The Cannabis Limited Charter Bank and Credit Union**
 31 **Advisory Board**

+
 33 11010.— (a) There is hereby created the Cannabis Limited
 34 Charter Bank and Credit Union Advisory Board. The board shall
 35 be comprised of the Treasurer, the Controller, and the Chief of the
 36 Bureau of Cannabis Control. The Director of Finance shall serve
 37 as an ex-officio, nonvoting member. Board members shall not be
 38 compensated for their services.

39 (b) The board shall be generally responsible for ensuring that
 40 the Cannabis Limited Charter Banking and Credit Union Law
 Page 15 1 provides a safe and efficient way to pay state and local taxes and
 2 fees, to pay rent associated with the account holder’s cannabis
 3 business, to issue special purpose checks, and legally invest in
 4 California’s economy, while reducing burdens placed on local
 5 government that result from collecting and managing large sums
 6 of cash.

7 11011.— In light of the particular challenges arising from
 8 cannabis business activities, the department shall submit reports
 9 of enforcement activities to the board for review annually or as
 10 the board may require. The board shall meet once a year, or more
 11 often as needed, at the board’s discretion, to review enforcement
 12 activity reports from the department. These meetings shall be
 13 noticed and open to public comment. The board shall evaluate the
 14 reports and the comments of the public and draft recommended

Page 15 15 actions to be taken legislatively or administratively, which shall
16 be submitted to the Legislature and Governor. Recommendations
17 provided to the Legislature shall be submitted in compliance with
18 Section 9795 of the Government Code.

19 11012. ~~The board shall provide guidance and education to~~
20 ~~registered broker-dealers and licensed investment advisors on how~~
21 ~~to accommodate account holders of cannabis limited charter banks~~
22 ~~and credit unions in purchasing, holding, and selling any of the~~
23 ~~investments described in paragraph (4) of subdivision (b) of Section~~
24 ~~11050.~~

25
26 Article 2. Licensing

+
28 11020. (a) A person may act as a cannabis limited charter bank
29 or credit union after obtaining a license pursuant to this division.

30 (b) A cannabis limited charter bank or credit union license is
31 not transferable or assignable.

32 11021. ~~A licensee shall comply with all requirements of the~~
33 ~~Financial Institutions Law (Division 1 (commencing with Section~~
34 ~~99)) and either the Banking Law (Division 1.1 (commencing with~~
35 ~~Section 1000)) or the California Credit Union Law (Division 5~~
36 ~~(commencing with Section 14000)), as applicable, except to the~~
37 ~~extent that any requirement of those laws are inconsistent with a~~
38 ~~provision of this division, in which case the provisions of this~~
39 ~~division shall prevail.~~

Page 16 1 11025. ~~A cannabis limited charter bank or credit union shall~~
2 ~~adopt policies and practices that allow it to achieve the principles~~
3 ~~and goals outlined in the federal Bank Secrecy Act (31 U.S.C. Sec.~~
4 ~~5311) and cooperate with the federal Financial Crimes Enforcement~~
5 ~~Network.~~

6 11026. ~~The department shall adopt emergency regulations~~
7 ~~pursuant to Chapter 3.5 (commencing with Section 11340) of Part~~
8 ~~1 of Division 3 of Title 2 of the Government Code to implement~~
9 ~~this division. The adoption of these regulations is deemed to be~~
10 ~~an emergency and necessary for the immediate preservation of the~~
11 ~~public peace, health, or safety.~~

12 11027. ~~(a) Except as provided in subdivision (b), the~~
13 ~~department shall not issue a license under this chapter before July~~
14 ~~1, 2020.~~

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Page 16 15 ~~(b) Notwithstanding subdivision (a), the department may issue~~
16 ~~a license under this chapter before July 1, 2020, if the following~~
17 ~~conditions are met:~~

18 ~~(1) The regulations required by Section 11026 have been~~
19 ~~adopted.~~

20 ~~(2) The Commissioner of Business Oversight makes a written~~
21 ~~finding that the requirement in paragraph (1) has been met and the~~
22 ~~department is prepared to issue licenses, consistent with the~~
23 ~~regulations required by Section 11026, and posts the written finding~~
24 ~~on the department's internet website.~~

~~CHAPTER 3. APPLICATION~~

26
+

28 ~~11040. An applicant that desires to be licensed to act as a~~
29 ~~cannabis limited charter bank or credit union pursuant to this~~
30 ~~division shall submit a completed application to the department~~
31 ~~in a form prescribed by the commissioner that satisfies the~~
32 ~~requirements of this chapter. An applicant that desires to be~~
33 ~~licensed to act as a limited charter bank or credit union pursuant~~
34 ~~to this division shall elect to form under either the Banking Law~~
35 ~~(Division 1.1 (commencing with Section 1000)) or the California~~
36 ~~Credit Union Law (Division 5 (commencing with Section 14000));~~
37 ~~and shall comply with all requirements imposed by those laws, as~~
38 ~~applicable, except to the extent any requirement of those laws is~~
39 ~~inconsistent with the provisions of this chapter. The name of a~~
40 ~~cannabis limited charter bank shall include the ending "cannabis~~

Page 17 1 ~~limited charter bank" or the abbreviation "C.L.C.B." or "CLCB."~~
2 ~~The name of a cannabis credit union shall include the ending~~
3 ~~"cannabis credit union" or the abbreviation "C.C.U." or "CCU."~~

4 ~~11042. The department may charge an applicant a reasonable~~
5 ~~fee for a cannabis limited charter bank or credit union license, not~~
6 ~~to exceed the costs of regulation.~~

~~CHAPTER 4. AUTHORIZATIONS~~

8
+

10 ~~11050. (a) A cannabis limited charter bank or credit union~~
11 ~~may issue to an account holder special purpose checks that shall~~
12 ~~be valid for only the purposes specified in subdivision (b). The~~
13 ~~following text shall be printed on each check in at least 12-point~~
14 ~~type, with the name of the issuing bank included: "This check is~~

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Page 17 15 issued by [insert name of bank] and may only be deposited or
16 cashed at this cannabis limited charter bank or credit union or
17 another cannabis limited charter bank or credit union that agrees
18 to accept the check.”

19 (b) Subject to the limitations of subdivision (d), a special
20 purpose check issued by a cannabis limited charter bank or credit
21 union may only be used for the following purposes:

22 (1) To pay fees or taxes to the state or a local jurisdiction.

23 (2) To pay rent on property that is leased by, or on behalf of,
24 the account holder’s cannabis business.

25 (3) To pay a vendor that is physically located in California for
26 expenses related to goods and services associated with the account
27 holder’s cannabis business.

28 (4) To purchase the following:

29 (A) Bonds, interest-bearing notes, or interest-bearing warrants
30 of this state for which the faith and credit of this state are pledged
31 for the payment of principal and interest.

32 (B) Bonds or warrants, including, but not limited to, revenue
33 warrants, of any county, city, metropolitan water district, California
34 water district, California water storage district, irrigation district
35 in the state, municipal utility district, or school district of this state.

36 (c) Subject to the limitations of subdivision (d), state and local
37 government offices are authorized to accept a special purpose
38 check issued by a cannabis limited charter bank or credit union.

Page 18 1 (d) An individual or entity, private or public, is not required to
2 accept a special purpose check issued by a cannabis limited charter
3 bank or credit union pursuant to this section.

4 (e) A cannabis limited charter bank or credit union is authorized
5 to cash a special purpose check presented to it by a person or entity
6 that is not an account holder, if that limited charter bank or credit
7 union previously issued that special purpose check to an account
8 holder, and the check was used for one of the authorized purposes
9 specified in subdivision (b).

10 11052. A cannabis limited charter bank or credit union shall
11 obtain and maintain private insurance in an amount acceptable to
12 the commissioner for the cannabis depository institution and its
13 assets at all times while it is engaged in banking services. Private
14 insurance shall not be unsatisfactory to the commissioner. In
15 seeking and retaining private insurance, a cannabis limited charter

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Page 18 16 bank or credit union may do all things and assume and discharge
 17 all obligations required of it that are not in conflict with state law.
 18 ~~11054. A cannabis limited charter bank or credit union may~~
 19 ~~enter into an agreement with one or more other limited charter~~
 20 ~~licensees in order to form a banking network. That agreement shall~~
 21 ~~be subject to the approval of the commissioner. The network shall~~
 22 ~~be for the purpose of assisting each other in providing services to~~
 23 ~~cannabis businesses and each other. A network of this type shall~~
 24 ~~not include any institution that is not a licensee under this division.~~
 25 ~~11056. A cannabis limited charter bank or credit union may~~
 26 ~~provide accounts to people and entities other than cannabis~~
 27 ~~businesses, pursuant to rules that may be adopted by the~~
 28 ~~commissioner.~~
 29 ~~11058. A cannabis limited charter bank or credit union may~~
 30 ~~charge fees for the banking services that it provides. Each cannabis~~
 31 ~~limited charter bank and credit union that charges fees shall~~
 32 ~~conspicuously post on its internet website the types of fees, and~~
 33 ~~the amounts of fees, it charges for its services, in a format intended~~
 34 ~~to provide transparency.~~
 35

~~CHAPTER 5. PROHIBITED PRACTICES~~

36
 +
 38 ~~11100. (a) A cannabis limited charter bank or credit union~~
 39 ~~shall not engage in banking activity with any other financial~~
 Page 19 1 ~~institution that lacks a limited purpose charter issued under this~~
 2 ~~division.~~
 3 ~~(b) A cannabis limited charter bank or credit union shall not~~
 4 ~~engage in any activity under Division 1.1 (commencing with~~
 5 ~~Section 1000) or Division 5 (commencing with Section 14000)~~
 6 ~~other than activity required to accept deposits and perform actions~~
 7 ~~described in Chapter 4.~~
 8 ~~(c) Except as otherwise specified in Section 11101, only a~~
 9 ~~cannabis limited charter bank may merge with one or more~~
 10 ~~cannabis limited charter banks. The provisions of Article 1~~
 11 ~~(commencing with Section 4880) of Chapter 4 of Division 1.6~~
 12 ~~applicable to mergers between California state banks shall apply~~
 13 ~~to the merger.~~
 14 ~~(d) Except as otherwise specified in Section 11101, only a credit~~
 15 ~~union licensed to provide services to cannabis businesses may~~
 16 ~~merge with one or more credit unions licensed to provide services~~

Page 19 17 to cannabis businesses. The provisions of Article 1 (commencing
18 with Section 15200) of Chapter 9 of Division 5 shall apply to the
19 merger.

20 (e) Except as otherwise specified in Section 11101, a cannabis
21 limited charter bank or credit union shall not be eligible to convert
22 to a federal bank or federal credit union or to another type of
23 business entity.

24

25 CHAPTER 6. OPERATIVE CONDITIONS

+

27 11101. (a) This division shall become inoperative if either of
28 the following occurs, whichever occurs first:

29 (1) The federal government, by legislative or executive action,
30 removes cannabis and cannabis-related substances from the
31 schedule of controlled substances, as defined in the Controlled
32 Substances Act (21 U.S.C. Sec. 812; 21 C.F.R. 1308).

33 (2) The federal government enacts legislation that establishes
34 protections for depository institutions that provide financial
35 services to cannabis-related legitimate businesses.

36 (b) Within 30 days of the occurrence of either event set forth
37 in paragraph (1) or (2) of subdivision (a), the department shall do
38 both of the following:

39 (1) Post notice of that occurrence on the homepage of its internet
40 website, and send notice to both the Secretary of State and the
Page 20 1 Office of Legislative Counsel. The notice shall specify the date
2 that this division shall become inoperative, which shall be one
3 calendar year following the effective date of the events specified
4 in paragraph (1) or (2) of subdivision (a).

5 (2) Provide guidance for the orderly resolution of all cannabis
6 limited charter banks or credit unions licensed pursuant to this
7 division. The resolution may involve, but is not limited to,
8 voluntary liquidation of a cannabis limited charter bank pursuant
9 to Division 1 (commencing with Section 99) the merger,
10 dissolution, or conversion of a cannabis limited charter credit union
11 pursuant to Division 5 (commencing with Section 14000), or a
12 sale, merger, or conversion of a cannabis limited charter bank
13 pursuant to Division 1.6 (commencing with Section 4800).

14 (c) A cannabis limited charter bank or credit union shall have
15 up to one calendar year to orderly resolve in a manner acceptable
16 to applicable state and federal regulators.

PROPOSED AMENDMENTS

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Page 20 17 ~~(d) Notwithstanding subdivision (c), a cannabis limited charter~~
18 ~~bank or credit union shall comply with all applicable sections of~~
19 ~~this code and the Corporations Code regarding filings with the~~
20 ~~Secretary of State.~~

21 ~~(e) If an existing cannabis limited charter bank or credit union~~
22 ~~licensed pursuant to this division fails in good faith to comply with~~
23 ~~subdivision (c), the department may take any action under this~~
24 ~~code it deems necessary, including signing documents on behalf~~
25 ~~of the cannabis limited charter bank or credit union, to carry out~~
26 ~~the purposes of this section.~~

27 ~~SEC. 9. Section 14001.1 of the Financial Code is amended to~~
28 ~~read:~~

29 ~~14001.1. This division is applicable to any person, other than~~
30 ~~a federal credit union engaging in the business of a credit union~~
31 ~~in this state. For purposes of this division, "person" shall have the~~
32 ~~meaning set forth in Section 5065 of the Corporations Code. This~~
33 ~~division also is applicable to any credit union that elects to form~~
34 ~~under this division to engage in providing credit union services to~~
35 ~~cannabis businesses except to the extent that the provisions of this~~
36 ~~division are inconsistent with Division 2.5 (commencing with~~
37 ~~Section 11000).~~

38 ~~SEC. 10. Section 14101 of the Financial Code is amended to~~
39 ~~read:~~

Page 21 1 ~~14101. The articles of incorporation of every credit union shall~~
2 ~~set forth the following:~~

3 ~~(a) The name of the corporation, which shall include the phrase~~
4 ~~"credit union."~~

5 ~~(b) (1) The following statement:~~

6 ~~The purpose of the corporation is to engage in credit union~~
7 ~~business and any other lawful activities which are not prohibited~~
8 ~~to a credit union by applicable laws or regulations.~~

9 ~~(2) In the case of a corporation formed under this part that is~~
10 ~~subject to the Cannabis Limited Charter Banking and Credit Union~~
11 ~~Law, in addition to the statement required under paragraph (1),~~
12 ~~the articles shall set forth a statement that the specific purpose of~~
13 ~~the corporation is to engage in providing limited credit union~~
14 ~~services to cannabis businesses under Division 2.5 (commencing~~
15 ~~with Section 11000). This paragraph shall become inoperative if~~
16 ~~Division 2.5 (commencing with Section 11000) becomes~~
17 ~~inoperative pursuant to Section 11101.~~

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Page 21 18 ~~(3) By December 31, 2003, each credit union that immediately~~
19 ~~prior to the enactment of this section was authorized to operate as~~
20 ~~a credit union shall amend its articles to comply with the provisions~~
21 ~~of paragraph (1). Notwithstanding Section 7813.5 of the~~
22 ~~Corporations Code, the amendment of the articles of a credit union~~
23 ~~as required by paragraph (1) may be adopted by approval of the~~
24 ~~board alone.~~

25 ~~(e) The name and street address in this state of the corporation's~~
26 ~~initial agent for service of process in accordance with subdivision~~
27 ~~(b) of Section 8210 of the Corporations Code.~~

28 ~~(d) The names and addresses of five or more persons appointed~~
29 ~~to act as initial directors.~~

30 ~~(e) The street address of the corporation.~~

31 ~~(f) The mailing address of the corporation, if different from the~~
32 ~~street address.~~

33 ~~SEC. 11. No reimbursement is required by this act pursuant to~~
34 ~~Section 6 of Article XIII B of the California Constitution because~~
35 ~~the only costs that may be incurred by a local agency or school~~
36 ~~district will be incurred because this act creates a new crime or~~
37 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
38 ~~for a crime or infraction, within the meaning of Section 17556 of~~
39 ~~the Government Code, or changes the definition of a crime within~~

Page 22 1 ~~the meaning of Section 6 of Article XIII B of the California~~
2 ~~Constitution.~~

3 ~~SEC. 12. This act is an urgency statute necessary for the~~
4 ~~immediate preservation of the public peace, health, or safety within~~
5 ~~the meaning of Article IV of the California Constitution and shall~~
6 ~~go into immediate effect. The facts constituting the necessity are:~~

7 ~~In order to eliminate public safety issues presented with~~
8 ~~managing and transporting cash because of the lack of access to~~
9 ~~financial services for cannabis businesses, to enable state and local~~
10 ~~governments to accurately perform accounting and other regulatory~~
11 ~~functions over the cannabis industry, and to enable cannabis~~
12 ~~businesses to comply with laws regulating the cannabis industry~~
13 ~~as soon as possible, it is necessary that this bill take effect~~
14 ~~immediately.~~

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PROPOSED AMENDMENTS

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PROPOSED AMENDMENTS TO SENATE BILL NO. 275

AMENDED IN ASSEMBLY AUGUST 25, 2020

AMENDED IN ASSEMBLY AUGUST 24, 2020

AMENDED IN ASSEMBLY JULY 27, 2020

AMENDED IN ASSEMBLY JUNE 17, 2020

AMENDED IN ASSEMBLY FEBRUARY 13, 2020

AMENDED IN ASSEMBLY JANUARY 6, 2020



RN2016031

SENATE BILL

No. 275

Introduced by Senators Pan and Leyva
(Coauthor: Assembly Member Gonzalez)

February 13, 2019

~~An act to add Section 12098.12 to the Government Code, to add Section 131021 to the Health and Safety Code, and to add Section 6403.1 to, and to add and repeal Section 6403.2 of, to the Labor Code, relating to personal protective equipment, and making an appropriation therefor. *equipment.*~~

Amendment 1

**Amendment 2
Amendment 3**

LEGISLATIVE COUNSEL'S DIGEST

SB 275, as amended, Pan. Health Care and Essential ~~Workers Protection Act~~: *Workers*: personal protective equipment.

Existing law establishes the State Department of Public Health to implement various programs throughout the state relating to public health, including licensing and regulating health facilities and control of infectious diseases.

This ~~bill, the Health Care and Essential Workers Protection Act~~, *bill* would require the State Department of Public Health ~~to~~ *and the Office*

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~~of Emergency Services, in coordination with other state agencies, to, upon appropriation and as necessary, establish a personal protective equipment (PPE) stockpile to ensure an adequate supply of new PPE for health care workers and essential workers, as defined, and would require the stockpile to be at least sufficient for a 45-day pandemic or other health emergency. stockpile. The bill would require the department to establish guidelines for the procurement of the PPE stockpile; procurement, management, and distribution of PPE, taking into account, among other things, the amount of each type of PPE that would be required for all health care workers and essential workers in the state during the a 90-day pandemic or other health emergency, which would represent the amount of PPE to be maintained in the stockpile. emergency.~~

Existing law requires every employer to furnish and use safety devices and safeguards, and to adopt and use practices that are reasonably adequate to render the employment and place of employment safe and healthful.

~~The bill would would, commencing January 1, 2023, or one year after the adoption of specified regulations, whichever is later, require health care employers, including clinics, health facilities, and home health agencies, to maintain an inventory of new, unexpired PPE for use in the event of a declared state of emergency and would require the inventory to be at least sufficient for 30 or 45 days of surge consumption, as defined, according to specified deadlines. determined by regulation, as specified. The bill would also specify the surge consumption requirements for health care employers that are safety net providers, as defined. The bill would assess a civil penalty on a health care employer, including a safety net provider, employer who violates that requirement, as specified. The bill would declare a health care employer's failure to ensure its health care workers use the PPE supplied to them and to provide PPE to its health care workers upon request to be an independent violation of the bill's requirements. The bill would authorize the Department of Industrial Relations to exempt a health care employer from the above-required civil penalties if the department determines that supply chain limitations make meeting the mandated level of supplies for a specific type of PPE infeasible and the health care employer has made a reasonable attempt to obtain PPE, as specified. On or before January 15, 2021, the bill would require a health care employer to report to the Department of Industrial Relations under penalty of perjury its highest 7-day consecutive average consumption~~

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~~of PPE during the 2019 calendar year. By expanding the scope of the crime of perjury, the bill would impose a state-mandated local program: PPE, or if the health care employer has made a showing that they are not in possession of the mandated level of supplies due to reasons beyond their control, as specified.~~

~~The bill would require the Department of Industrial Relations to adopt regulations, in consultation with the State Department of Public Health, setting forth requirements for determining 45-day surge capacity levels, as specified, for a health care employer’s PPE inventory, and would authorize the Department of Industrial Regulations to incorporate by reference existing guidance from the department and from the federal Occupational Safety and Health Administration regarding standards for PPE usage. The bill would require the department to establish similar surge capacity requirements for safety net providers: inventory.~~

~~The bill would also establish the Personal Protective Equipment Advisory Committee (committee) to be composed of 18 or more members, as specified, appointed by the Secretary of Labor. The bill would require the Department of Industrial Relations to submit a report to the Legislature, on or before May 30, 2021, including, among other recommendations, recommendations regarding the type and amount of PPE needed by health care employers to ensure compliance with public health and safety standards and would require the committee to provide recommendations to the department necessary for the report. The bill would require the Department of Industrial Relations to submit an additional report to the Legislature, on or before January 1, 2031, on the effectiveness of the health care employer inventory requirement: Committee, consisting of representatives from skilled nursing facilities, physicians, and labor organizations that represent health care workers, among other groups, to make recommendations for the development of guidelines for the procurement, management, and distribution of PPE, as specified.~~

~~Existing law establishes the Made in California Program within the Governor’s Office of Business and Economic Development, to encourage consumer product awareness and to foster purchases of high-quality products made in California. Existing law creates the Made in California Fund within the State Treasury, consisting of donations and other moneys to be used for the purposes of the Made in California Program, as specified.~~

~~This bill would require the office, as a part of the Made in California Program, to encourage in-state production of PPE in order to assist the~~

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~~State Department of Public Health and providers in complying with the bill's requirements. The bill would create the Health Care Workforce Protection Account within the Made in California Fund, consisting of donations and other moneys, for the exclusive purpose of promoting the production of PPE. The bill would continuously appropriate the donated moneys in the account for the purpose of implementing those provisions, thereby making an appropriation. The bill would require any other funds deposited and maintained in the account to be available for the same purpose, upon appropriation by the Legislature. The bill would declare that its provisions are severable.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

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

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

Page 4

Amendment 4

- 1 ~~SECTION 1. This act shall be known, and may be cited, as the~~
- 2 ~~Health Care and Essential Workers Protection Act.~~
- 3 ~~SEC. 2. Section 12098.12 is added to the Government Code,~~
- 4 ~~to read:~~
- 5 ~~12098.12. (a) (1) As part of the Made in California Program,~~
- 6 ~~the office shall encourage the in-state production of personal~~
- 7 ~~protective equipment, (PPE) in order to assist the State Department~~
- 8 ~~of Public Health in complying with Section 131021 of the Health~~
- 9 ~~and Safety Code and to assist providers in complying with Section~~
- 10 ~~6403.1 of the Labor Code.~~
- 11 ~~(2) For purposes of this section, "personal protective equipment"~~
- 12 ~~and "providers" have the same meanings as defined in subdivision~~
- 13 ~~(e) of Section 131021 of the Health and Safety Code.~~
- 14 ~~(b) The office may accept monetary donations or other donations~~
- 15 ~~from businesses, nonprofit organizations, or individuals for the~~
- 16 ~~purpose of implementing this section. These donations shall be~~
- 17 ~~deposited in the account established in subdivision (c).~~
- 18 ~~(c) The Health Care Workforce Protection Account is hereby~~
- 19 ~~created within the Made in California Fund established by~~
- 20 ~~subdivision (h) of Section 12098.10. Moneys deposited into the~~

PROPOSED AMENDMENTS

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Page 4 21 ~~account shall be used exclusively for the promotion of in-state~~
22 ~~production of PPE for the purposes described in this section,~~
23 ~~Section 131021 of the Health and Safety Code, and Section 6403.1~~
24 ~~of the Labor Code. The office shall use funds deposited into the~~
25 ~~account to provide grants, loans, loan guarantees, and other~~
26 ~~incentives for projects that increase capacity for the in-state~~
27 ~~manufacturing of PPE. Notwithstanding Section 13340, funds~~
28 ~~deposited and maintained in the account that were donated pursuant~~
29 ~~to subdivision (b) are continuously appropriated, without regard~~
30 ~~to fiscal years, to the director for the purposes of implementing~~
31 ~~this section. Any other funds deposited and maintained in the~~
32 ~~account shall be available, subject to appropriation by the~~
33 ~~Legislature, for purposes of implementing this section.~~

Page 5 1 ~~SEC. 3.~~
+ 2 ~~SECTION 1.~~ Section 131021 is added to the Health and Safety
3 Code, to read:
4 131021. (a) The Legislature finds that having access to a
5 statewide stockpile of personal protective equipment in the event
6 of a pandemic or other health emergency is vital to the health and
7 safety of its health care and essential workers, as well as the general
8 population, which both relies on this workforce and is susceptible
9 to disease transmission should members of this workforce
10 needlessly be infected with transmissible disease. ~~Moreover, the~~
11 ~~Legislature finds that having in-state production capacity for~~
12 ~~personal protective equipment is vital to ensuring access to that~~
13 ~~equipment in the event of a pandemic or other health emergency,~~
14 ~~in light of likely national and global supply chain disruption.~~
15 (b) ~~The department shall establish a personal protective~~
16 ~~equipment (PPE) stockpile to ensure an adequate supply of PPE~~
17 ~~for health care workers and essential workers in the state that is at~~
18 ~~least sufficient for a 45-day pandemic or other health emergency.~~
19 ~~PPE in the stockpile shall be new and not previously worn or used.~~
20 (c)
+ 21 (b) The following definitions apply for purposes of this section:
22 (1) "Department" means the State Department of Public Health.
+ 23 (2) "Office" means the Office of Emergency Services.
24 (2)
+ 25 (3) "Essential workers" means primary and secondary school
26 workers, workers at detention facilities, as defined in Section 9500
27 of the Penal Code, in-home support providers, childcare providers,

Amendment 5

**Amendment 6
Amendment 7**

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Page 5 25 government workers whose work with the public continues
 26 throughout the crisis, and workers in other positions that the
 27 ~~department, in its sole discretion, State Public Health Officer or~~
 + *the Director of the Office of Emergency Services* deems vital to
 28 public health and safety, as well as economic and national security.
 29 ~~(3)~~
 + (4) “Health care worker” means any worker who provides direct
 30 patient care and services directly supporting patient care, including,
 31 but not limited, to physicians, pharmacists, clinicians, nurses, aides,
 32 technicians, janitorial and housekeeping staff, food services
 33 workers, and nonmanagerial administrative staff.
 34 ~~(4)~~
 + (5) “Personal protective equipment” or “PPE” means protective
 35 equipment for eyes, face, head, and extremities, protective clothing,
 36 respiratory devices, and protective shields and barriers, including,
 Page 6 1 but not limited to, N95 and other filtering facepiece respirators,
 2 elastomeric air-purifying respirators with appropriate particulate
 3 filters or cartridges, powered air purifying respirators, disinfecting
 4 and sterilizing devices and supplies, medical gowns and apparel,
 5 face masks, surgical masks, face shields, gloves, shoe coverings,
 6 and the equipment identified by or otherwise necessary to comply
 7 with Section 5199 of Title 8 of the California Code of Regulations.
 12 ~~(5)~~
 + (6) “Provider” means a licensed clinic, as described in Chapter
 13 1 (commencing with Section 1200), an outpatient setting, as
 14 described in Chapter 1.3 (commencing with Section 1248) of, a
 15 health facility as described in Chapter 2 (commencing with Section
 16 1250) of, or a county medical facility, as described in Chapter 2.5
 17 (commencing with Section 1440) of, Division 2, a home health
 18 agency, a physician’s office, a professional medical corporation,
 19 a medical partnership, a medical foundation, a rural health clinic,
 20 as defined in Section 1395x(aa)(2) of Title 42 of the United States
 21 Code, or a federally qualified health center, as defined in Section
 22 1395x(aa)(4) of Title 42 of the United States Code, and any other
 23 entity that provides medical services in California.
 24 ~~(6)~~
 + (7) “Stockpile” means the personal protective equipment
 25 stockpile created pursuant to subdivision ~~(b)~~: (c).
 + (c) *Within one year of the effective date of this section, the*
 + *department and office, in coordination with other state agencies,*

Amendment 8

Amendment 9

Amendment 10

Amendment 11

Amendment 12

Amendment 13

PROPOSED AMENDMENTS

Page 6

+ shall establish a PPE stockpile, upon appropriation and as
+ necessary.

Amendment 14

26 (d) ~~The department shall consider the recommendations of the~~
27 ~~Personal Protective Equipment Advisory Committee created in~~
28 ~~Section 6403.2 of the Labor Code and establish guidelines for~~
29 ~~procurement of PPE for the stockpile. also establish guidelines~~
+ ~~for procurement, management, and distribution of PPE from the~~
+ ~~department. The department and office shall consider the~~
+ ~~recommendations of the Personal Protective Equipment Advisory~~
+ ~~Committee created pursuant to subdivision (f) in developing these~~
30 ~~guidelines. At a minimum, the guidelines shall take into account~~
+ ~~all of the following:~~

31 (1) The various types of PPE that may be required during a
32 pandemic or other health emergency.

33 (2) The shelf life of each type of PPE ~~to be obtained for the~~
34 ~~stockpile that may be obtained from the department~~ and how to
35 ~~annually~~ restock a portion of each type of PPE to ensure the
+ ~~stockpile consists~~ *procurements consist* of unexpired PPE.

Amendment 15

Amendment 16

Amendment 17

36 (3) The amount of each type of PPE that would be required for
37 ~~all~~ health care workers and essential workers in the state during
38 ~~a 45-day 90-day~~ pandemic or other health emergency, ~~which shall~~
39 ~~be the amount of PPE maintained in the stockpile. emergency.~~

Amendment 18

Amendments 19 & 20

+ (4) *Lessons learned from previous pandemics and state*
+ *emergencies, including but not limited to, supply procurement,*
+ *management, and distribution.*

+ (5) *Guidance on how to define essential workers based upon*
+ *different hazards.*

+ (6) *Geographical distribution of PPE storage.*

+ (7) *Guidance on how to establish policies and standards for*
+ *PPE surge capacity to ensure that workers have access to an*
+ *adequate supply of PPE during a pandemic or other health*
+ *emergency.*

+ (8) *The policies and funding that would be required for the state*
+ *to establish a PPE stockpile.*

+ (9) *How distribution from any procurement shall be prioritized*
+ *in the event that there is insufficient PPE to meet the needs of*
+ *providers or employers of essential workers, including*
+ *consideration of the following:*

Page 7

1 (e) ~~The department shall consider the recommendations of the~~
2 ~~Personal Protective Equipment Advisory Committee established~~

Amendment 21

PROPOSED AMENDMENTS

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Page 7 3 pursuant to Section 6403.2 of the Labor Code. Based on the
4 committee's recommendations as to the types of PPE and the
5 determination of how to calculate the appropriate amount of PPE
6 for the state stockpile, the department shall procure 20 percent of
7 the full stockpile three years after enactment of the act that adds
8 this section, only if the Office of Emergency Services determines
9 that prices of PPE have returned to a normal level, adjusted for
10 inflation. The department shall procure an additional 20 percent
11 of the full stockpile in each of the subsequent four years, so that
12 the department has procured 100 percent of the stockpile in five
13 years.
14
15 (f) At least 25 percent of PPE in the stockpile shall be
16 manufactured in California. Distribution of the 25 percent required
17 to be manufactured in California shall be exclusively made via
18 resale, whether sold during a state of emergency pursuant to
19 paragraph (1) of, or sold in the normal course of business pursuant
20 to paragraph (2) of, subdivision (g). The Governor shall have the
21 authority to waive this requirement for one year if the Governor
22 determines that the state cannot procure enough PPE to meet the
23 in-state manufacturing requirements. The Governor shall notify
24 the Legislature within 15 days of this determination.
25 (1) PPE that qualifies as being "substantially made" in California
26 pursuant to Section 12098.10 of the Government Code
27 presumptively counts towards the 25-percent threshold.
28 (2) PPE manufactured outside of California presumptively
29 counts towards the 25-percent threshold if the following
30 qualifications are met:
31 (A) The company manufacturing the product has manufacturing
32 facilities in the state.
33 (B) The company is party to a community benefits agreement
34 related to the in-state manufacturing facilities.
35 (C) The in-state manufacturing facilities provide services related
36 to the PPE, including, but not limited to, packaging or distribution.
37 (g) The department shall distribute PPE from the stockpile only
38 under either of the following two circumstances:
39 (1) If the Governor declares a state of emergency, or a local
40 emergency is declared, for which PPE will be required.
Page 8 1 (2) To sell PPE from the stockpile, provided that the department
2 acquires new PPE to offset any shortage resulting from the sale.

PROPOSED AMENDMENTS

Page 8 3 ~~(h) The department shall establish guidelines regarding~~
4 ~~distribution of PPE from the stockpile, including, but not limited~~
5 ~~to, the timing and amount of PPE distribution and identifying~~
6 ~~geographic areas in critical need of PPE, as well as the terms of~~
7 ~~sale should the department determine sale is appropriate. The~~
8 ~~guidelines shall provide, at a minimum, that in the event there is~~
9 ~~insufficient PPE to meet needs, the department may consider~~
10 ~~prioritizing distribution for providers and employers of essential~~
11 ~~workers that meet any of the following qualifications:~~
12 ~~(1)~~
+ (A) The provider or employer is in a location with a high share
13 of low-income residents.
14 ~~(2)~~
+ (B) The provider or employer is in a medically underserved
15 area, as designated by the United States Department of Health and
16 Human Services, Health Resources and Services Administration.
17 ~~(3)~~
+ (C) The provider or employer disproportionately serves a
18 medically underserved population, as designated by the United
19 States Department of Health and Human Services, Health
20 Resources and Services Administration.
21 ~~(4)~~
+ (D) The provider or employer is in a county with a high infection
22 rate or high hospitalization rate related to the declared emergency.
23 ~~(i) Before January 1, 2024, the department shall provide the~~
25 ~~Department of Finance with an estimate of the cost to fully stock~~
26 ~~the stockpile and to maintain the stockpile for the subsequent five~~
27 ~~years. The department shall update these estimates on an annual~~
28 ~~basis.~~
+ (e) *The development of the guidelines shall be informed by the*
+ *recommendations of the Personal Protective Equipment Advisory*
+ *Committee pursuant to subdivision (f). The guidelines shall not*
+ *establish policies or standards that are less protective or*
+ *prescriptive than any federal, state, or local law on PPE standards.*
+ (f) *The Personal Protective Equipment Advisory Committee is*
+ *hereby established. The advisory committee shall consist of the*
+ *following:*
+ (1) *One representative of an association representing multiple*
+ *types of hospitals and health systems.*

Amendment 22

Amendment 23

Amendment 24

Amendment 25

PROPOSED AMENDMENTS

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- + (2) *One representative of an association representing skilled nursing facilities.*
- + (3) *One representative of an association representing primary care clinics.*
- + (4) *One representative of a statewide association representing physicians.*
- + (5) *Two representatives of labor organizations that represent health care workers.*
- + (6) *Two representatives of labor organizations that represent essential workers, as defined by paragraph (3) of subdivision (b).*
- + (7) *One representative from the personal protective equipment manufacturing industry.*
- + (8) *One consumer representative.*
- + (9) *One representative from an association representing counties.*
- + (10) *One representative from the State Department of Public Health.*
- + (11) *One representative from the Office of Emergency Services.*
- + (12) *One representative from the Emergency Medical Services Authority.*
- + (13) *One representative from the State Department of Social Services.*
- + (g) *The Director of the Office of Emergency Services or their designee shall appoint the representatives from paragraphs (1) through (9), inclusive.*
- + (h) *The Personal Protective Equipment Advisory Committee shall make recommendations to the office and department necessary to develop the guidelines required pursuant to subdivision (d).*

Page 8

29 ~~SEC. 4.~~

+ SEC. 2. Section 6403.1 is added to the Labor Code, to read:

30 6403.1. (a) The Legislature hereby finds that having access

31 to a health care employer-level inventory of personal protective

32 equipment in the event of a pandemic or other health emergency

33 is vital to the health and safety of its health care workforce, as well

34 as the general population, who both rely on the state’s health care

35 workforce for care and are susceptible to disease transmission

36 should members of the health care workforce needlessly be infected

37 with transmissible disease.

38 (b) For purposes of this section:

Amendment 26

PROPOSED AMENDMENTS

Amendment 27

Page 8 39 (1) "Department" means the Department of Industrial Relations.
Page 9 1 (2) (A) "Health care employer" means ~~a licensed clinic, as~~
2 ~~described in Chapter 1 (commencing with Section 1200) of, an~~
3 ~~entity described in subdivision (i) or (l) of Section 1206 of, an~~
4 ~~outpatient setting, as described in Chapter 1.3 (commencing with~~
5 ~~Section 1248) of, a health facility, as described in Chapter 2~~
6 ~~(commencing with Section 1250), with the exception of facilities~~
7 ~~described in subdivisions (d), (e), (g), (h), and (m) of Section 1250~~
8 ~~of, the Health and Safety Code, or a county medical facility, as~~
9 ~~described in Chapter 2.5 (commencing with Section 1440) of,~~
10 ~~Division 2 of the Health and Safety Code, a home health agency,~~
11 ~~a medical practice that is operated or maintained as part of an~~
12 ~~integrated health system or health facility, a rural health clinic, as~~
13 ~~defined in Section 1395x(aa)(2) of Title 42 of the United States~~
14 ~~Code, or a federally qualified health center, as defined in Section~~
15 ~~1395x(aa)(4) of Title 42 of the United States Code. *a person or*~~
16 ~~*organization that employs workers in the public or private sector*~~
+ ~~*to provide direct patient care in a general acute care hospital*~~
+ ~~*setting as defined in subdivision (a) of Section 1250 of the Health*~~
+ ~~*and Safety Code, a health facility as defined in paragraphs (1)*~~
+ ~~*and (2) of subdivision (c) of Section 1250 of the Health and Safety*~~
+ ~~*Code, a medical practice that is operated or maintained as part*~~
+ ~~*of an integrated health system or health facility, or a dialysis clinic*~~
+ ~~*licensed in accordance with paragraph (2) of subdivision (b) of*~~
+ ~~*Section 1204 of the Health and Safety Code.*~~
17 (B) "Health care employer" does not include an independent
18 medical practice that is owned and operated, or maintained as a
19 clinic or office, by one or more licensed physicians and used as
20 an office for the practice of their profession, within the scope of
21 their license, regardless of the name used publicly to identify the
22 place or establishment unless the medical practice is operated or
23 maintained exclusively as part of an integrated health system or
24 health facility or is an entity described in subdivision (l) of Section
25 1206 of the Health and Safety Code.
26 (3) "~~Safety net provider~~" means ~~a health care employer, as~~
27 ~~described in paragraph (2), that is a licensed clinic, as described~~
28 ~~in subdivision (a) of Section 1204 of the Health and Safety Code,~~
29 ~~an intermittent clinic exempt from licensure under subdivision (h)~~
30 ~~of, or a tribal clinic exempt from licensure under subdivision (e)~~
31 ~~of, Section 1206 of the Health and Safety Code, or an outpatient~~

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Page 9 32 ~~setting conducted, maintained, or operated by a federally~~
33 ~~recognized Indian tribe, tribal organization, or urban Indian~~
34 ~~organization, as defined in Section 1603 of Title 25 of the United~~
35 ~~States Code, or a rural health clinic, as defined in Section~~
36 ~~1395x(aa)(2) of, or a federally qualified health center, as defined~~
37 ~~in Section 1395x(aa)(4) of, Title 42 of the United States Code.~~

Page 10 1 (4)
+ (3) “PPE” and “health care worker” have the same meanings
2 as defined in subdivision (c) of Section 131021 of the Health and
3 Safety Code.

Amendment 29

4 (c) ~~(1)~~ Except as provided in paragraphs (1) and (2) of
5 subdivision (h), a health care employer shall maintain an inventory
6 of unexpired PPE, as specified in this section, for use in the event
7 of a state of emergency declaration by the Governor, or a local
8 emergency for a pandemic or other health emergency. Personal
9 protective equipment in the inventory shall be new and not
10 previously worn or used. ~~Except as provided in paragraph (2), a~~
11 A health care employer who violates the requirement to maintain
12 an inventory of unexpired personal protective equipment prescribed
13 by this section shall be assessed a civil penalty of up to twenty-five
14 thousand dollars (\$25,000) for each violation, as specified in
15 Section 6428.

Amendment 30

16 (2) ~~A safety net provider that violates the requirement to~~
17 ~~maintain an inventory of unexpired personal protective equipment~~
18 ~~as specified in this section shall be assessed a civil penalty per~~
19 ~~violation, in an amount to be determined by the department, not~~
20 ~~to exceed a total of two thousand five hundred dollars (\$2,500)~~
21 ~~per calendar year.~~

Amendment 31

22 (d) ~~(1) On or before January 15, 2021, the department, after~~
23 ~~consultation with the Office of Emergency Services, shall evaluate~~
24 ~~and make a determination as to whether there is a significant supply~~
25 ~~limitation of PPE facing purchasers in California. If the department~~
26 ~~determines there is not a significant supply limitation, commencing~~
27 ~~60 days after this determination, only those health care employers~~
28 ~~licensed under subdivisions (a), (b), and (c) of Section 1250 of the~~
29 ~~Health and Safety Code shall maintain an inventory equal to a~~
30 ~~minimum of six months of daily consumption. For purposes of~~
31 ~~this subdivision, daily consumption shall be based on the highest~~
32 ~~seven-day consecutive daily average consumption of PPE in 2019.~~
33 ~~If the department determines that there is a significant supply~~

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Page 10 34 limitation, the department shall revisit this determination every 30
35 days until there is a determination that there is no longer a
36 significant supply limitation, after which employers described in
37 subdivisions (a), (b), and (c) of Section 1250 of the Health and
38 Safety Code shall have 60 days to maintain an inventory equal to
39 a minimum of six months of daily consumption.

Page 11 1 (2) The department may determine that a supply limitation only
2 exists for one or more types of PPE, in which case a health care
3 employer shall be required to maintain an inventory only for the
4 types of PPE for which the department has determined there is not
5 a supply limitation.

6 (3) In evaluating whether a significant supply chain limitation
7 exists, the department shall take into account whether health care
8 employers have made requests through their medical health
9 operational area coordinators to obtain PPE.

10 (4) If the department determines there is a significant supply
11 limitation, the department shall make findings with applicable
12 evidence that supply chain limitations exist regarding a particular
13 type of PPE. The findings shall be made in writing, submitted to
14 the Legislature and relevant health care employers and relevant
15 health care unions, and posted on the department's internet website.

16 (5) For the purposes of paragraph (1), health employers licensed
17 under subdivision (e) of Section 1250 of the Health and Safety
18 Code shall only be required to have a 30-day supply of gloves until
19 regulations are adopted pursuant to subdivision (k).

20 (e) (1) Commencing January 1, 2022, or 60 days after
21 regulations are adopted pursuant to subdivision (k), health care
22 employers, except as provided in subdivision (f), shall have an
23 inventory at least sufficient for 30 days of surge consumption, as
24 determined by those regulations.

26 (2)

+ (d) (1) Commencing January 1, 2023, or 365 days after
27 regulations are adopted pursuant to subdivision (k); (h), whichever
28 is later, health care employers shall have an inventory at least
29 sufficient for 45 days of surge consumption, as determined by
30 those regulations. *The regulations shall not establish policies or*
+ *standards that are less protective or prescriptive than any federal,*
+ *state, or local law on PPE standards.*

+ (2) A health care employer shall provide an inventory of its
+ PPE to the Division of Occupational Safety and Health upon

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+ request. An employer who violates this requirement shall be
+ assessed a civil penalty of up to twenty-five thousand dollars
+ (\$25,000) for each violation. This subdivision does not apply to a
+ health care employer that provides services in a facility or other
+ setting controlled or owned by another health care employer that
+ is obligated to maintain a PPE inventory and report that inventory
+ pursuant to this subdivision for all its owned or controlled facilities
+ and settings.

Page 11

35 (f)

Amendment 34

+ ~~A safety net provider shall do either of the following, starting
six months after regulations established in subdivision (k) are
adopted if there is no supply chain limitation on any type of PPE
as described in subdivision (i), or January 1, 2023, whichever is
later:~~

Page 12

1 (1) ~~Have an inventory at least sufficient for 30 days of surge
consumption, as determined by the regulations adopted pursuant
to subdivision (k).~~

2
3
4 (2) ~~Demonstrate to the department that it has entered into a
standing contract with a third-party entity that manufactures,
maintains, or distributes PPE that ensures timely access to an
inventory at least sufficient for 30 days of consumption, as
determined by the regulations adopted pursuant to subdivision (k).~~

5
6
7
8
9 (g) ~~On or before January 15, 2021, a health care employer
licensed under subdivisions (a), (b), and (c) of Section 1250 of the
Health and Safety Code shall report to the department under penalty
of perjury its highest seven-day consecutive daily average
consumption of PPE during the 2019 calendar year.~~

10 (h)

+ (e) (1) If a health care employer provides services in a facility
or other setting controlled or owned by another health care
employer who is obligated to maintain a PPE inventory, the health
care employer who controls or owns the facility or other setting
shall be required to maintain the required PPE for the health care
employer providing services in that facility or setting.

23 (2) A health care employer may apply for a waiver of some or
24 all of the PPE inventory requirements of subdivision ~~(e)~~ (d) by
25 writing to the department, which may approve the waiver if the
26 facility has 25 or fewer employees and the employer agrees to
27 close in-person operations during a public health emergency in
28 which increased use of PPE is recommended by the public health

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Page 12 29 officer until sufficient PPE becomes available to return to in-person
30 operations. This provision does not apply to health facilities as
31 described in subdivisions (a), (b), and (c) of Section 1250 of the
32 Health and Safety Code.

33 (3) If a health care employer’s inventory of a type of PPE dips
34 below the mandated level of supplies as a result of the health care
35 employer’s distribution of that type of PPE to its health care
36 workers or another health care employer’s workers during a state
37 of emergency declared by the Governor or a declared local
38 emergency for a pandemic or other health emergency, the health
39 care employer shall not be subject to the civil penalty established
40 by subdivision (c) for 30 days, provided the health care employer

Page 13 1 replenishes its inventory to the mandated level within 30 days if
2 the department has determined there is not a supply limitation
3 pursuant to paragraph (4). ~~If the health care employer’s inventory
4 of a type of PPE dips below 75 percent of the mandated
5 requirement, the health care employer shall notify the department
6 in writing if the shortage is due to distribution of that type of PPE
7 to health care workers. Safety net providers shall not be required
8 to notify the department when their inventory goes below the
9 required level. limitation.~~

11 (i)
+ (f) The department may exempt a health care employer from a
12 civil penalty prescribed by subdivision (c) if the department
13 determines that supply chain limitations make meeting the
14 mandated level of supplies infeasible and a health care employer
15 has made a reasonable attempt, in the discretion of the department,
16 to obtain PPE. ~~The department may grant an exemption only until
17 the supply chain limitation has been resolved and the department
18 shall revisit that determination every 30 days. This paragraph shall
19 apply only to the specific type of PPE that is impacted by supply
20 chain limitations: PPE, or if the health care employer makes a
+ showing that meeting the mandated level of supplies is not possible
+ due to issues beyond their control, such as if the equipment was
+ ordered from a manufacturer or distributor but the order was not
+ fulfilled, or if the equipment was damaged or stolen.~~

22 (j) (1)
23 (g) Consistent with existing law, a designated health care
24 employer shall supply appropriate PPE to its health care workers,
25 ensure that its health care workers use the PPE supplied to them,

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Page 13 26 and provide appropriate PPE to its health care workers upon their
27 request. This paragraph is declaratory of existing law.

29 ~~(2) Each day that a health care employer fails to comply with
30 paragraph (1) shall constitute an independent violation of this
31 section.~~

32 ~~(3) Notwithstanding paragraph (2) and existing law, a safety
33 net provider who violates paragraph (1) shall be assessed a civil
34 penalty per violation, in an amount to be determined by the
35 department, not to exceed a total of two thousand five hundred
36 dollars (\$2,500) per calendar year.~~

38 ~~(k)~~
+ ~~(h) (1) The department, by regulation and in consultation with~~

39 the State Department of Public Health, shall set forth requirements
40 for determining 45-day surge capacity levels for health care

Page 14 1 employer inventory as required by *paragraph (1) of subdivision
2 (e), (d)*, including, but not limited to, the types and amount of PPE

3 to be maintained by the health care employer based on the type
4 and size of each health care employer, as well as the composition

5 of health care workers in its workforce. The regulations shall
6 require each health care employer to maintain sufficient PPE for

7 all health care workers. The regulations shall consider the
8 recommendations of the Personal Protective Equipment Advisory

9 Committee established pursuant to Section 6403.2. ~~For employers
10 described in subdivision (a), (b), or (c) of Section 1250 of the~~

11 ~~Health and Safety Code, the requirement to maintain an inventory
12 of at least six months of daily consumption pursuant to subdivision~~

13 ~~(d) shall be a minimum level, and regulations establishing surge
14 capacity levels shall not require less than this amount. The~~

15 ~~regulations may incorporate by reference existing guidance of the
16 department and of the federal Occupational Safety and Health~~

17 ~~Administration regarding standards for PPE usage, including, but
18 not limited to, the guidance at Sections 3380 and 5199 of Title 8~~

19 ~~of the California Code of Regulations and Subpart I (commencing
20 with Section 1910.132) of Part 1910 of Title 29 of the Code of~~

21 ~~Federal Regulations, as in effect on May 19, 2020.~~
22 ~~(2) The department, by regulation and in consultation with the~~

23 ~~State Department of Public Health and the Personal Protective
24 Equipment Advisory Committee, shall set forth requirements for~~

25 ~~calculating capacity levels for safety net providers' inventory as
26 required by subdivision (f), including, but not limited to, the types~~

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**Amendment 42
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Page 14 27 and amount of PPE to be maintained by the health care employer
28 that is a safety net provider, based on anonymized facility
29 information regarding the type and size of each health care
30 employer and its workforce.

32 ~~(f) A health care employer shall provide an inventory of its PPE
33 to the Division of Occupational Safety and Health upon request.
34 An employer who violates this requirement shall be assessed a
35 civil penalty of up to twenty-five thousand dollars (\$25,000) for
36 each violation. This subdivision does not apply to health care
37 employers that are safety net providers or to a health care employer
38 that provides services in a facility or other setting controlled or
39 owned by another health care employer that is obligated to maintain
40 a PPE inventory and report that inventory pursuant to this~~
subdivision for all its owned or controlled facilities and settings.

Page 15 1

3 SEC. 5. Section 6403.2 is added to the Labor Code, to read:

4 6403.2. (a) The Personal Protective Equipment Advisory
5 Committee is hereby established. The Secretary of Labor or their
6 designee shall appoint the membership of the advisory committee.
7 The advisory committee shall consist of 18 or more individuals
8 who have experience in health care, public health, workers' rights,
9 or emergency preparedness and shall consist of the following:

10 (1) One representative of an association representing multiple
11 types of hospitals and health systems.

12 (2) One representative of an association representing skilled
13 nursing facilities.

14 (3) Two representatives of an association representing primary
15 care clinics, with one of those members representing clinics
16 specializing in family planning that are safety net providers.

18 (4) One representative of a statewide association representing
19 physicians from multiple specialties and modes of practice.

21 (5) Three representatives of labor organizations that represent
22 health care workers.

23 (6) Three representatives of labor organizations that represent
24 essential workers, as defined by paragraph (2) of subdivision (c)
25 of Section 131021 of the Health and Safety Code, with one of the
26 members from a labor union representing agricultural workers.

28 (7) One representative of an association representing home
29 health agencies.

30 (8) One consumer representative.

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Page 15 31 ~~(9) One representative from the Department of Industrial~~
32 ~~Relations.~~
33 ~~(10) One representative from the State Department of Public~~
34 ~~Health.~~
35 ~~(11) One representative from the Office of Emergency Services.~~
36 ~~(12) One representative from an association representing~~
37 ~~counties.~~
38 ~~(13) One public member with expertise in emergency~~
39 ~~preparedness and employee health and safety.~~
Page 16 1 ~~(14) One representative from the Department of General~~
2 ~~Services.~~
3 ~~(15) One representative from an association representing~~
4 ~~ambulatory surgery centers.~~
5 ~~(b) The Personal Protective Equipment Advisory Committee~~
6 ~~shall make recommendations to the department and the State~~
7 ~~Department of Public Health necessary for the department to~~
8 ~~provide the report required pursuant to subdivision (c).~~
9 ~~(c) On or before May 30, 2021, the department shall submit a~~
10 ~~report to the Legislature based on the recommendations of the~~
11 ~~Personal Protective Equipment Advisory Committee. The report~~
12 ~~shall include recommendations on implementation of the various~~
13 ~~requirements of the committee and shall include, but not be limited~~
14 ~~to, recommendations relating to both of the following:~~
15 ~~(1) The type and amount of PPE needed by health care employer~~
16 ~~type, during a public health emergency, to ensure compliance to~~
17 ~~public health and safety standards.~~
18 ~~(2) The type and amount of PPE required for the state stockpile~~
19 ~~created pursuant to Section 131021 of the Health and Safety Code.~~
20 ~~(3) Guidance on best practices for how health care employers~~
21 ~~may make fit testing available for their workforce to be properly~~
22 ~~fitted for PPE.~~
23 ~~(4) Actions that the state can take to encourage a resilient supply~~
24 ~~chain and to incentivize in-state production of PPE. The committee~~
26 ~~shall create an additional working group, made up of interested~~
27 ~~members of the committee and subject matter experts in supply~~
28 ~~chain and distribution management or other areas of expertise, to~~
29 ~~provide guidance on actions the state can take to create a state-run~~
30 ~~group purchasing organization by 2023.~~
32 ~~(5) Guidance on best practices for provider inventory storage.~~

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Page 16 33 ~~(6) Strategies to increase transparency for both the state stockpile~~
34 ~~and health care employers' inventory.~~
35 ~~(7) With regard to health care employers, other than health~~
36 ~~facilities described in Chapter 2 (commencing with Section 1250)~~
37 ~~of Division 2 of the Health and Safety Code, the report in this~~
38 ~~subdivision shall take into consideration the following factors:~~
39 ~~(A) Patient volume during a pandemic emergency.~~
Page 17 1 ~~(B) The ability of an employer to utilize telemedicine to~~
2 ~~minimize in-person contact.~~
3 ~~(C) The intent of the Legislature that the inventory required for~~
4 ~~these employers be composed primarily of PPE that the employer~~
5 ~~would utilize in the normal course of business.~~
6 ~~(d) On or before January 1, 2031, the department and the State~~
7 ~~Department of Public Health shall submit a report to the Legislature~~
8 ~~on the effectiveness of the health care employer inventory~~
9 ~~requirement and make recommendations, if any, that will improve~~
10 ~~health care worker safety and health care employer preparedness~~
11 ~~during a pandemic or other health emergency. The report shall~~
12 ~~also review the effectiveness of the state stockpile.~~
13 ~~(1) A report to be submitted pursuant to subdivision (c) or (d)~~
14 ~~shall be submitted in compliance with Section 9795 of the~~
15 ~~Government Code.~~
16 ~~(2) Pursuant to Section 10231.5 of the Government Code, this~~
17 ~~section is repealed on January 1, 2035.~~
18 ~~SEC. 6.~~
+ ~~SEC. 3.~~ The provisions of this act are severable. If any
19 provision of this act or its application is held invalid, that invalidity
20 shall not affect other provisions or applications that can be given
21 effect without the invalid provision or application.
22 ~~SEC. 7.~~ No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

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PROPOSED AMENDMENTS TO SENATE BILL NO. 776

AMENDED IN ASSEMBLY AUGUST 25, 2020

AMENDED IN ASSEMBLY AUGUST 24, 2020

AMENDED IN ASSEMBLY AUGUST 10, 2020

AMENDED IN ASSEMBLY JULY 27, 2020

AMENDED IN SENATE JANUARY 6, 2020

SENATE BILL

No. 776



RN2015904

Introduced by Senator Skinner

February 22, 2019

An act to amend Section 1045 of the Evidence Code, and to amend Sections 832.5, 832.7, and 832.12 of, and to add Section 832.13 to, the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

SB 776, as amended, Skinner. Peace officers: release of records.

(1) Existing law makes peace officer and custodial officer personnel records and specified records maintained by any state or local agency, or information obtained from these records, confidential and prohibits these records from being disclosed in any criminal or civil proceeding except by discovery. Existing law sets forth exceptions to this policy, including, among others, records relating to specified incidents involving the discharge of a firearm, sexual assault, perjury, or misconduct by a peace officer or custodial officer. Existing law makes a record related to an incident involving the use of force against a person resulting in death or great bodily injury subject to disclosure. Existing law requires

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a state or local agency to make these excepted records available for inspection pursuant to the California Public Records Act.

This bill ~~would~~ *would, commencing July 1, 2021*, make every incident involving use of force to make a member of the public comply with an officer, force that is unreasonable, or excessive force subject to disclosure. The bill ~~would~~ *would, commencing July 1, 2021*, require records relating to sustained findings of unlawful arrests and unlawful searches to be subject to disclosure. The bill ~~would~~ *would, commencing July 1, 2021*, also require the disclosure of records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct involving prejudice or discrimination on the basis of specified protected classes. The bill would require the retention of all complaints currently in the possession of a department or agency for a period of at least 30 years if they are related to a sustained finding of specified conduct. The bill would require that records relating to an incident in which an officer resigned before an investigation is completed to also be subject to release. The bill would require records subject to disclosure to be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure, except as specified. The bill would impose a civil fine not to exceed \$1,000 per day for each day beyond 30 days that records subject to disclosure are not disclosed. The bill would entitle a member of the public who successfully files suit for the release of records to twice the party’s reasonable costs and attorney’s fees. By imposing additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

(2) Existing law authorizes an agency to delay the release of a record involving the discharge of a firearm or the use of force during an active criminal investigation, as provided.

This bill would expand the authorization to delay the release of records during an investigation to include records of incidents involving sexual assault and dishonesty by officers, and the records of incidents involving prejudice or discrimination, wrongful arrests, and wrongful searches that are required to be made public by this bill.

(3) Existing law requires a court, in determining the relevance of evidence, to exclude from trial any information consisting of complaints concerning peace officer conduct that is more than 5 years older than the subject of the litigation.

This bill would delete that provision.

(4) Existing law requires an agency or department employing peace officers to make a record of any investigations of misconduct. Existing law requires a peace officer seeking employment with a department or agency to give written permission to the hiring agency or department to view that file.

This bill would require each department or agency to request and review that file prior to hiring a peace officer. The bill would also require every person employed as a peace officer to immediately report all uses of force by the officer to the officer’s department or agency. By imposing additional duties on local law enforcement, this bill would impose a state-mandated local program.

(5) This bill would incorporate additional changes to Section 1045 of the Evidence Code proposed by SB 1220 to be operative only if this bill and SB 1220 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 832.7 of the Penal Code proposed by SB 731 to be operative only if this bill and SB 731 are enacted and this bill is enacted last.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

Page 3 1 SECTION 1. Section 1045 of the Evidence Code is amended
2 to read:
3 1045. (a) This article does not affect the right of access to
4 records of complaints, or investigations of complaints, or discipline
5 imposed as a result of those investigations, concerning an event
6 or transaction in which the peace officer or custodial officer, as
7 defined in Section 831.5 of the Penal Code, participated, or which
8 the officer perceived, and pertaining to the manner in which the
9 officer performed the officer’s duties, provided that information
10 is relevant to the subject matter involved in the pending litigation.

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Page 3 11 (b) In determining relevance, the court shall examine the
12 information in chambers in conformity with Section 915, and shall
13 exclude from disclosure of both of the following:

Page 4 1 (1) In any criminal proceeding the conclusions of any officer
2 investigating a complaint filed pursuant to Section 832.5 of the
3 Penal Code.
4 (2) Facts sought to be disclosed that are so remote as to make
5 disclosure of little or no practical benefit.
6 (c) In determining relevance where the issue in litigation
7 concerns the policies or pattern of conduct of the employing
8 agency, the court shall consider whether the information sought
9 may be obtained from other records maintained by the employing
10 agency in the regular course of agency business which would not
11 necessitate the disclosure of individual personnel records.
12 (d) Upon motion seasonably made by the governmental agency
13 which has custody or control of the records to be examined or by
14 the officer whose records are sought, and upon good cause showing
15 the necessity thereof, the court may make any order which justice
16 requires to protect the officer or agency from unnecessary
17 annoyance, embarrassment or oppression.
18 (e) The court shall, in any case or proceeding permitting the
19 disclosure or discovery of any peace or custodial officer records
20 requested pursuant to Section 1043, order that the records disclosed
21 or discovered may not be used for any purpose other than a court
22 proceeding pursuant to applicable law.
23 SEC. 1.5. Section 1045 of the Evidence Code is amended to
24 read:
25 1045. (a) This article does not affect the right of access to
26 records of complaints, or investigations of complaints, or discipline
27 imposed as a result of those investigations, concerning an event
28 or transaction in which the peace officer or custodial officer, as
29 defined in Section 831.5 of the Penal Code, participated, or which
30 the officer perceived, and pertaining to the manner in which the
31 officer performed their duties, provided that information is relevant
32 to the subject matter involved in the pending litigation.
35 (b) In determining relevance, the court shall examine the
36 information in chambers in conformity with Section 915, and shall
37 exclude from disclosure of both of the following:

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Page 5 4 (1) In any criminal proceeding, the conclusions of any officer
5 investigating a complaint filed pursuant to Section 832.5 of the
6 Penal Code.
8 (2) Facts sought to be disclosed that are so remote as to make
9 disclosure of little or no practical benefit.
10 (c) In determining relevance where the issue in litigation
11 concerns the policies or pattern of conduct of the employing
12 agency, the court shall consider whether the information sought
13 may be obtained from other records maintained by the employing
14 agency in the regular course of agency business that would not
15 necessitate the disclosure of individual personnel records.
16 (d) Upon motion seasonably made by the governmental agency
17 which has custody or control of the records to be examined or by
18 the officer whose records are sought, and upon good cause showing
19 the necessity thereof, the court may make any order which justice
20 requires to protect the officer or agency from unnecessary
21 annoyance, embarrassment or oppression.
22 (e) The court shall, in any case or proceeding permitting the
23 disclosure or discovery of any peace or custodial officer records
24 requested pursuant to Section 1043, order that the records disclosed
25 or discovered may not be used for any purpose other than a court
26 proceeding pursuant to applicable law. However, if the records
27 are released to a prosecuting agency, the prosecuting agency may,
28 with leave of a superior court judge, release the records in a
29 subsequent criminal case when the officer to whom the records
30 pertain will be testifying in order to comply with the requirements
31 of *Brady v. Maryland* (1963) 373 U.S. 83.

32 SEC. 2. Section 832.5 of the Penal Code is amended to read:
33 832.5. (a) (1) Each department or agency in this state that
34 employs peace officers shall establish a procedure to investigate
35 complaints by members of the public against the personnel of these
36 departments or agencies, and shall make a written description of
37 the procedure available to the public.
38 (2) Each department or agency that employs custodial officers,
39 as defined in Section 831.5, may establish a procedure to
40 investigate complaints by members of the public against those
Page 6 1 custodial officers employed by these departments or agencies,
2 provided however, that any procedure so established shall comply
3 with the provisions of this section and with the provisions of
4 Section 832.7.

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5 (b) Complaints and any reports or findings relating to these
6 complaints shall be retained for a period of at least 5 years, unless
7 a sustained finding of conduct specified in subdivision (b) of
8 Section 832.7 is made, in which case any complaints and any
9 reports or findings related to these complaints shall be retained
10 and for a period of at least 30 years, including all complaints and
11 any reports currently in the possession of the department or agency.
12 All complaints retained pursuant to this subdivision may be
13 maintained either in the peace or custodial officer’s general
14 personnel file or in a separate file designated by the department
15 or agency as provided by department or agency policy, in
16 accordance with all applicable requirements of law. However,
17 prior to any official determination regarding promotion, transfer,
18 or disciplinary action by an officer’s employing department or
19 agency, the complaints described by subdivision (c) shall be
20 removed from the officer’s general personnel file and placed in
21 separate file designated by the department or agency, in accordance
22 with all applicable requirements of law.

23 (c) Complaints by members of the public that are determined
24 by the peace or custodial officer’s employing agency to be
25 frivolous, as defined in Section 128.5 of the Code of Civil
26 Procedure, or unfounded or exonerated, or any portion of a
27 complaint that is determined to be frivolous, unfounded, or
28 exonerated, shall not be maintained in that officer’s general
29 personnel file. However, these complaints shall be retained in
30 other, separate files that shall be deemed personnel records for
31 purposes of the California Public Records Act (Chapter 3.5
32 (commencing with Section 6250) of Division 7 of Title 1 of the
33 Government Code) and Section 1043 of the Evidence Code.

34 (1) Management of the peace or custodial officer’s employing
35 agency shall have access to the files described in this subdivision.

36 (2) Management of the peace or custodial officer’s employing
37 agency shall not use the complaints contained in these separate
38 files for punitive or promotional purposes except as permitted by
39 subdivision (f) of Section 3304 of the Government Code.

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1 (3) Management of the peace or custodial officer’s employing
2 agency may identify any officer who is subject to the complaints
3 maintained in these files which require counseling or additional
4 training. However, if a complaint is removed from the officer’s

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Page 7 5 personnel file, any reference in the personnel file to the complaint
6 or to a separate file shall be deleted.

7 (d) As used in this section, the following definitions apply:

8 (1) "General personnel file" means the file maintained by the
9 agency containing the primary records specific to each peace or
10 custodial officer's employment, including evaluations, assignments,
11 status changes, and imposed discipline.

12 (2) "Unfounded" means that the investigation clearly established
13 that the allegation is not true.

14 (3) "Exonerated" means that the investigation clearly established
15 that the actions of the peace or custodial officer that formed the
16 basis for the complaint are not violations of law or department
17 policy.

18 SEC. 3. Section 832.7 of the Penal Code is amended to read:

19 832.7. (a) Except as provided in subdivision (b), the personnel
20 records of peace officers and custodial officers and records
21 maintained by a state or local agency pursuant to Section 832.5,
22 or information obtained from these records, are confidential and
23 shall not be disclosed in any criminal or civil proceeding except
24 by discovery pursuant to Sections 1043 and 1046 of the Evidence
25 Code. This section does not apply to investigations or proceedings
26 concerning the conduct of peace officers or custodial officers, or
27 an agency or department that employs those officers, conducted
28 by a grand jury, a district attorney's office, or the Attorney
29 General's office.

30 (b) (1) Notwithstanding subdivision (a), subdivision (f) of
31 Section 6254 of the Government Code, or any other law, the
32 following peace officer or custodial officer personnel records and
33 records maintained by a state or local agency shall not be
34 confidential and shall be made available for public inspection
35 pursuant to the California Public Records Act (Chapter 3.5
36 commencing with Section 6250) of Division 7 of Title 1 of the
37 Government Code):

38 (A) A record relating to the report, investigation, or findings of
39 any of the following:

Page 8 1 (i) An incident involving the discharge of a firearm at a person
2 by a peace officer or custodial officer.

3 (ii) ~~An incident involving the use of force to make a member
4 of the public comply with an officer, force that is unreasonable,~~

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Page 8 5 ~~excessive force, or force that results in great bodily injury or death~~
6 ~~by a peace officer or custodial officer against a person.~~
7 (ii) *An incident involving the use of force against a person by*
+ *a peace officer or custodial officer that resulted in death or in*
+ *great bodily injury.*
+ (iii) *Commencing July 1, 2021, an incident involving the use of*
+ *force to make a member of the public comply with an officer, force*
+ *that is unreasonable, or excessive force against a person by a*
+ *peace officer or custodial officer.*
8 (B) (i) Any record relating to an incident in which a sustained
9 finding was made by any law enforcement agency or oversight
10 agency that a peace officer or custodial officer engaged in sexual
11 assault involving a member of the public.
12 (ii) As used in this subparagraph, “sexual assault” means the
13 commission or attempted initiation of a sexual act with a member
14 of the public by means of force, threat, coercion, extortion, offer
15 of leniency or other official favor, or under the color of authority.
16 For purposes of this definition, the propositioning for or
17 commission of any sexual act while on duty is considered a sexual
18 assault.
19 (iii) As used in this subparagraph, “member of the public” means
20 any person not employed by the officer’s employing agency and
21 includes any participant in a cadet, explorer, or other youth program
22 affiliated with the agency.
23 (C) Any record relating to an incident *in which a sustained*
+ *finding was made by any law enforcement agency or oversight*
24 *agency* involving dishonesty by a peace officer or custodial officer
25 directly relating to the reporting, investigation, or prosecution of
26 a crime, or directly relating to the reporting of, or investigation of
27 misconduct by, another peace officer or custodial officer, including,
28 but not limited to, any false statements, filing false reports,
29 destruction, falsifying, or concealing of evidence, or ~~sustained~~
+ ~~findings of perjury.~~
30 (D) ~~Any~~ *Commencing July 1, 2021, any* record relating to an
31 incident in which a sustained finding was made by any law
32 enforcement agency or oversight agency that a peace officer or
33 custodial officer engaged in conduct including, but not limited to,
34 verbal statements, writings, online posts, recordings, and gestures,
35 involving prejudice or discrimination against a person on the basis
36 of race, religious creed, color, national origin, ancestry, physical

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Page 8 37 disability, mental disability, medical condition, genetic information,
38 marital status, sex, gender, gender identity, gender expression,
39 age, sexual orientation, or military and veteran status.

Page 9 1 (E) ~~Any~~ *Commencing July 1, 2021, any* record relating to an
2 incident in which a sustained finding was made by any law
3 enforcement agency or oversight agency that the peace officer
4 made an unlawful arrest or conducted an unlawful search.

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5 (2) Records that shall be released pursuant to this subdivision
6 include all investigative reports; photographic, audio, and video
7 evidence; transcripts or recordings of interviews; autopsy reports;
8 all materials compiled and presented for review to the district
9 attorney or to any person or body charged with determining
10 whether to file criminal charges against an officer in connection
11 with an incident, whether the officer’s action was consistent with
12 law and agency policy for purposes of discipline or administrative
13 action, or what discipline to impose or corrective action to take;
14 documents setting forth findings or recommended findings; and
15 copies of disciplinary records relating to the incident, including
16 any letters of intent to impose discipline, any documents reflecting
17 modifications of discipline due to the Skelly or grievance process,
18 and letters indicating final imposition of discipline or other
19 documentation reflecting implementation of corrective action.
20 Records that shall be released pursuant to this subdivision also
21 include records relating to an incident specified in paragraph (1)
22 in which the peace officer or custodial officer resigned before the
23 law enforcement agency or oversight agency concluded its
24 investigation into the alleged incident.

25 (3) A record from a separate and prior investigation or
26 assessment of a separate incident shall not be released unless it is
27 independently subject to disclosure pursuant to this subdivision.

28 (4) If an investigation or incident involves multiple officers,
29 information about allegations of misconduct by, or the analysis or
30 disposition of an investigation of, an officer shall not be released
31 pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1),
32 unless it relates to a finding regarding that officer that is itself
33 subject to disclosure pursuant to this section. However, factual
34 information about that action of an officer during an incident, or
35 the statements of an officer about an incident, shall be released if
36 they are relevant to a finding against another officer that is subject

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Page 9 37 to release pursuant to subparagraph (B), (C), (D), or (E) of
38 paragraph (1).
39 (5) An agency shall redact a record disclosed pursuant to this
40 section only for any of the following purposes:

Page 10 1 (A) To remove personal data or information, such as a home
2 address, telephone number, or identities of family members, other
3 than the names and work-related information of peace and custodial
4 officers.
5 (B) To preserve the anonymity of complainants, victims, and
6 witnesses.
7 (C) To protect confidential medical, financial, or other
8 information of which disclosure is specifically prohibited by federal
9 law or would cause an unwarranted invasion of personal privacy
10 that clearly outweighs the strong public interest in records about
11 possible misconduct and use of force by peace officers and
12 custodial officers.
13 (D) Where there is a specific, articulable, and particularized
14 reason to believe that disclosure of the record would pose a
15 significant danger to the physical safety of the peace officer,
16 custodial officer, or another person.
17 (6) Notwithstanding paragraph (5), an agency may redact a
18 record disclosed pursuant to this section, including personal
19 identifying information, where, on the facts of the particular case,
20 the public interest served by not disclosing the information clearly
21 outweighs the public interest served by disclosure of the
22 information.
23 (7) An agency may withhold a record of an incident described
24 in paragraph (1) that is the subject of an active criminal or
25 administrative investigation, in accordance with any of the
26 following:
27 (A) (i) During an active criminal investigation, disclosure may
28 be delayed for up to 60 days from the date the misconduct or use
29 of force occurred or until the district attorney determines whether
30 to file criminal charges related to the misconduct or use of force,
31 whichever occurs sooner. If an agency delays disclosure pursuant
32 to this clause, the agency shall provide, in writing, the specific
33 basis for the agency’s determination that the interest in delaying
34 disclosure clearly outweighs the public interest in disclosure. This
35 writing shall include the estimated date for disclosure of the
36 withheld information.

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Page 10 37 (ii) After 60 days from the misconduct or use of force, the
 38 agency may continue to delay the disclosure of records or
 39 information if the disclosure could reasonably be expected to
 40 interfere with a criminal enforcement proceeding against an officer
 Page 11 1 who engaged in misconduct or used the force. If an agency delays
 2 disclosure pursuant to this clause, the agency shall, at 180-day
 3 intervals as necessary, provide, in writing, the specific basis for
 4 the agency’s determination that disclosure could reasonably be
 5 expected to interfere with a criminal enforcement proceeding. The
 6 writing shall include the estimated date for the disclosure of the
 7 withheld information. Information withheld by the agency shall
 8 be disclosed when the specific basis for withholding is resolved,
 9 when the investigation or proceeding is no longer active, or by no
 10 later than 18 months after the date of the incident, whichever occurs
 11 sooner.

12 (iii) After 60 days from the misconduct or use of force, the
 13 agency may continue to delay the disclosure of records or
 14 information if the disclosure could reasonably be expected to
 15 interfere with a criminal enforcement proceeding against someone
 16 other than the officer who engaged in the misconduct or used the
 17 force. If an agency delays disclosure under this clause, the agency
 18 shall, at 180-day intervals, provide, in writing, the specific basis
 19 why disclosure could reasonably be expected to interfere with a
 20 criminal enforcement proceeding, and shall provide an estimated
 21 date for the disclosure of the withheld information. Information
 22 withheld by the agency shall be disclosed when the specific basis
 23 for withholding is resolved, when the investigation or proceeding
 24 is no longer active, or by no later than 18 months after the date of
 25 the incident, whichever occurs sooner, unless extraordinary
 26 circumstances warrant continued delay due to the ongoing criminal
 27 investigation or proceeding. In that case, the agency must show
 28 by clear and convincing evidence that the interest in preventing
 29 prejudice to the active and ongoing criminal investigation or
 30 proceeding outweighs the public interest in prompt disclosure of
 31 records about misconduct or use of force by peace officers and
 32 custodial officers. The agency shall release all information subject
 33 to disclosure that does not cause substantial prejudice, including
 34 any documents that have otherwise become available.

35 (iv) In an action to compel disclosure brought pursuant to
 36 Section 6258 of the Government Code, an agency may justify

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Page 11 37 delay by filing an application to seal the basis for withholding, in
38 accordance with Rule 2.550 of the California Rules of Court, or
39 any successor rule, if disclosure of the written basis itself would
40 impact a privilege or compromise a pending investigation.

Page 12 1 (B) If criminal charges are filed related to the incident in which
2 misconduct occurred or force was used, the agency may delay the
3 disclosure of records or information until a verdict on those charges
4 is returned at trial or, if a plea of guilty or no contest is entered,
5 the time to withdraw the plea pursuant to Section 1018.

6 (C) During an administrative investigation into an incident
7 described in paragraph (1), the agency may delay the disclosure
8 of records or information until the investigating agency determines
9 whether the misconduct or use of force violated a law or agency
10 policy, but no longer than 180 days after the date of the employing
11 agency’s discovery of the misconduct or use of force, or allegation
12 of misconduct or use of force, by a person authorized to initiate
13 an investigation.

14 (8) A record of a complaint, or the investigations, findings, or
15 dispositions of that complaint, shall not be released pursuant to
16 this section if the complaint is frivolous, as defined in Section
17 128.5 of the Code of Civil Procedure, or if the complaint is
18 unfounded.

19 (9) The cost of copies of records subject to disclosure pursuant
20 to this subdivision that are made available upon the payment of
21 fees covering direct costs of duplication pursuant to subdivision
22 (b) of Section 6253 of the Government Code shall not include the
23 costs of editing or redacting the records.

24 (10) Except to the extent temporary withholding for a longer
25 period is permitted pursuant to paragraph (7), records subject to
26 disclosure under this subdivision shall be provided at the earliest
27 possible time and no later than 45 days from the date of a request
28 for their disclosure. For every day beyond 30 days after the date
29 which a record is to be disclosed, as required by this subdivision,
30 an agency shall be subject to a civil fine not to exceed one thousand
31 dollars (\$1,000) per day for each day that the records are not
32 disclosed.

33 (11) Notwithstanding subdivision (d) of Section 6259, a member
34 of the public who files a suit pursuant to Section 6258 of the
35 Government Code for records required by this subdivision that are
36 found to have been improperly withheld or improperly redacted

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Page 12 37 shall be entitled to twice the party’s reasonable costs and attorney’s
38 fees. Costs and fees awarded pursuant to this paragraph shall be
39 paid by the public agency.

Page 13 1 (c) Notwithstanding subdivisions (a) and (b), a department or
2 agency shall release to the complaining party a copy of the
3 complaining party’s own statements at the time the complaint is
4 filed.

5 (d) Notwithstanding subdivisions (a) and (b), a department or
6 agency that employs peace or custodial officers may disseminate
7 data regarding the number, type, or disposition of complaints
8 (sustained, not sustained, exonerated, or unfounded) made against
9 its officers if that information is in a form which does not identify
10 the individuals involved.

11 (e) Notwithstanding subdivisions (a) and (b), a department or
12 agency that employs peace or custodial officers may release factual
13 information concerning a disciplinary investigation if the officer
14 who is the subject of the disciplinary investigation, or the officer’s
15 agent or representative, publicly makes a statement they know to
16 be false concerning the investigation or the imposition of
17 disciplinary action. Information may not be disclosed by the peace
18 or custodial officer’s employer unless the false statement was
19 published by an established medium of communication, such as
20 television, radio, or a newspaper. Disclosure of factual information
21 by the employing agency pursuant to this subdivision is limited
22 to facts contained in the officer’s personnel file concerning the
23 disciplinary investigation or imposition of disciplinary action that
24 specifically refute the false statements made public by the peace
25 or custodial officer or their agent or representative.

26 (f) (1) The department or agency shall provide written
27 notification to the complaining party of the disposition of the
28 complaint within 30 days of the disposition.

29 (2) The notification described in this subdivision is not
30 conclusive or binding or admissible as evidence in any separate
31 or subsequent action or proceeding brought before an arbitrator,
32 court, or judge of this state or the United States.

33 (g) This section does not affect the discovery or disclosure of
34 information contained in a peace or custodial officer’s personnel
35 file pursuant to Section 1043 of the Evidence Code.

36 (h) This section does not supersede or affect the criminal
37 discovery process outlined in Chapter 10 (commencing with

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Page 13 38 Section 1054) of Title 6 of Part 2, or the admissibility of personnel
39 records pursuant to subdivision (a), which codifies the court
40 decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

Page 14 1 (i) Nothing in this chapter is intended to limit the public’s right
2 of access as provided for in *Long Beach Police Officers*
3 *Association v. City of Long Beach* (2014) 59 Cal.4th 59.

4 SEC. 3.5. Section 832.7 of the Penal Code is amended to read:
5 832.7. (a) Except as provided in subdivision (b), the personnel
6 records of peace officers and custodial officers and records
7 maintained by a state or local agency pursuant to Section 832.5,
8 or information obtained from these records, are confidential and
9 shall not be disclosed in any criminal or civil proceeding except
10 by discovery pursuant to Sections 1043 and 1046 of the Evidence
11 Code. This section does not apply to investigations or proceedings
12 concerning the conduct of peace officers or custodial officers, or
13 an agency or department that employs those officers, conducted
14 by a grand jury, a district attorney’s office, the Attorney General’s
15 office, or the Commission on Peace Officer Standards and Training.

17 (b) (1) Notwithstanding subdivision (a), subdivision (f) of
18 Section 6254 of the Government Code, or any other law, the
19 following peace officer or custodial officer personnel records and
20 records maintained by a state or local agency shall not be
21 confidential and shall be made available for public inspection
22 pursuant to the California Public Records Act (Chapter 3.5
23 (commencing with Section 6250) of Division 7 of Title 1 of the
24 Government Code):

25 (A) A record relating to the report, investigation, or findings of
26 any of the following:

27 (i) An incident involving the discharge of a firearm at a person
28 by a peace officer or custodial officer.

32 ~~(ii) An incident involving the use of force to make a member
33 of the public comply with an officer, force that is unreasonable,
34 excessive force, or force that results in great bodily injury or death
35 by a peace officer or custodial officer against a person.~~

+ (ii) *An incident involving the use of force against a person by
+ a peace officer or custodial officer that resulted in death or in
+ great bodily injury.*

+ (iii) *Commencing July 1, 2021, an incident involving the use of
+ force to make a member of the public comply with an officer, force*

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+ *that is unreasonable, or excessive force against a person by a*
+ *peace officer or custodial officer.*

Page 14 36 (B) (i) Any record relating to an incident in which a sustained
37 finding was made by any law enforcement agency or oversight
38 agency that a peace officer or custodial officer engaged in sexual
39 assault involving a member of the public.

Page 15 1 (ii) As used in this subparagraph, “sexual assault” means the
2 commission or attempted initiation of a sexual act with a member
3 of the public by means of force, threat, coercion, extortion, offer
4 of leniency or other official favor, or under the color of authority.
5 For purposes of this definition, the propositioning for or
6 commission of any sexual act while on duty is considered a sexual
7 assault.

8 (iii) As used in this subparagraph, “member of the public” means
9 any person not employed by the officer’s employing agency and
10 includes any participant in a cadet, explorer, or other youth program
11 affiliated with the agency.

12 (C) Any record relating to an incident *in which a sustained*
+ *finding was made by any law enforcement agency or oversight*
14 *agency* involving of dishonesty by a peace officer or custodial
15 officer directly relating to the reporting, investigation, or
16 prosecution of a crime, or directly relating to the reporting of, or
17 investigation of misconduct by, another peace officer or custodial
18 officer, including, but not limited to, any false statements, filing
19 false reports, destruction, falsifying, or concealing of evidence, or
20 ~~sustained findings of perjury.~~

22 (D) ~~Any Commencing July 1, 2021,~~ any record relating to an
23 incident in which a sustained finding was made by any law
24 enforcement agency or oversight agency that a peace officer or
25 custodial officer engaged in conduct including, but not limited to,
26 verbal statements, writings, online posts, recordings, and gestures,
27 involving prejudice or discrimination against a person on the basis
28 of race, religious creed, color, national origin, ancestry, physical
29 disability, mental disability, medical condition, genetic information,
30 marital status, sex, gender, gender identity, gender expression,
31 age, sexual orientation, or military and veteran status.

32 (E) ~~Any Commencing July 1, 2021,~~ any record relating to an
33 incident in which a sustained finding was made by any law
34 enforcement agency or oversight agency that the peace officer
35 made an unlawful arrest or conducted an unlawful search.

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Page 15 36 (2) Records that shall be released pursuant to this subdivision
37 include all investigative reports; photographic, audio, and video
38 evidence; transcripts or recordings of interviews; autopsy reports;
39 all materials compiled and presented for review to the district
40 attorney or to any person or body charged with determining
Page 16 1 whether to file criminal charges against an officer in connection
2 with an incident, whether the officer’s action was consistent with
3 law and agency policy for purposes of discipline or administrative
4 action, or what discipline to impose or corrective action to take;
5 documents setting forth findings or recommended findings; and
6 copies of disciplinary records relating to the incident, including
7 any letters of intent to impose discipline, any documents reflecting
8 modifications of discipline due to the Skelly or grievance process,
9 and letters indicating final imposition of discipline or other
10 documentation reflecting implementation of corrective action.
11 Records that shall be released pursuant to this subdivision also
12 include records relating to an incident specified in paragraph (1)
13 in which the peace officer or custodial officer resigned before the
14 law enforcement agency or oversight agency concluded its
15 investigation into the alleged incident.
16 (3) A record from a separate and prior investigation or
17 assessment of a separate incident shall not be released unless it is
18 independently subject to disclosure pursuant to this subdivision.
19 (4) If an investigation or incident involves multiple officers,
20 information about allegations of misconduct by, or the analysis or
21 disposition of an investigation of, an officer shall not be released
22 pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1),
23 unless it relates to a finding regarding that officer that is itself
24 subject to disclosure pursuant to this section. However, factual
25 information about that action of an officer during an incident, or
26 the statements of an officer about an incident, shall be released if
27 they are relevant to a finding against another officer that is subject
28 to release pursuant to subparagraph (B), (C), (D), or (E) of
29 paragraph (1).
31 (5) An agency shall redact a record disclosed pursuant to this
32 section only for any of the following purposes:
33 (A) To remove personal data or information, such as a home
34 address, telephone number, or identities of family members, other
35 than the names and work-related information of peace and custodial
36 officers.

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Page 16 37 (B) To preserve the anonymity of complainants, victims, and
38 witnesses.

39 (C) To protect confidential medical, financial, or other
40 information of which disclosure is specifically prohibited by federal
Page 17 1 law or would cause an unwarranted invasion of personal privacy
2 that clearly outweighs the strong public interest in records about
3 possible misconduct and use of force by peace officers and
4 custodial officers.

5 (D) Where there is a specific, articulable, and particularized
6 reason to believe that disclosure of the record would pose a
7 significant danger to the physical safety of the peace officer,
8 custodial officer, or another person.

9 (6) Notwithstanding paragraph (5), an agency may redact a
10 record disclosed pursuant to this section, including personal
11 identifying information, where, on the facts of the particular case,
12 the public interest served by not disclosing the information clearly
13 outweighs the public interest served by disclosure of the
14 information.

15 (7) An agency may withhold a record of an incident described
16 in paragraph (1) that is the subject of an active criminal or
17 administrative investigation, in accordance with any of the
18 following:

19 (A) (i) During an active criminal investigation, disclosure may
20 be delayed for up to 60 days from the date the misconduct or use
21 of force occurred or until the district attorney determines whether
22 to file criminal charges related to the misconduct or use of force,
23 whichever occurs sooner. If an agency delays disclosure pursuant
24 to this clause, the agency shall provide, in writing, the specific
25 basis for the agency’s determination that the interest in delaying
26 disclosure clearly outweighs the public interest in disclosure. This
27 writing shall include the estimated date for disclosure of the
28 withheld information.

29 (ii) After 60 days from the misconduct or use of force, the
30 agency may continue to delay the disclosure of records or
31 information if the disclosure could reasonably be expected to
32 interfere with a criminal enforcement proceeding against an officer
33 who engaged in misconduct or used the force. If an agency delays
34 disclosure pursuant to this clause, the agency shall, at 180-day
35 intervals as necessary, provide, in writing, the specific basis for
36 the agency’s determination that disclosure could reasonably be

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Page 17 37 expected to interfere with a criminal enforcement proceeding. The
38 writing shall include the estimated date for the disclosure of the
39 withheld information. Information withheld by the agency shall
40 be disclosed when the specific basis for withholding is resolved,
Page 18 1 when the investigation or proceeding is no longer active, or by no
2 later than 18 months after the date of the incident, whichever occurs
3 sooner.
4 (iii) After 60 days from the misconduct or use of force, the
5 agency may continue to delay the disclosure of records or
6 information if the disclosure could reasonably be expected to
7 interfere with a criminal enforcement proceeding against someone
8 other than the officer who engaged in misconduct or used the force.
9 If an agency delays disclosure under this clause, the agency shall,
10 at 180-day intervals, provide, in writing, the specific basis why
11 disclosure could reasonably be expected to interfere with a criminal
12 enforcement proceeding, and shall provide an estimated date for
13 the disclosure of the withheld information. Information withheld
14 by the agency shall be disclosed when the specific basis for
15 withholding is resolved, when the investigation or proceeding is
16 no longer active, or by no later than 18 months after the date of
17 the incident, whichever occurs sooner, unless extraordinary
18 circumstances warrant continued delay due to the ongoing criminal
19 investigation or proceeding. In that case, the agency must show
20 by clear and convincing evidence that the interest in preventing
21 prejudice to the active and ongoing criminal investigation or
22 proceeding outweighs the public interest in prompt disclosure of
23 records about misconduct or use of force by peace officers and
24 custodial officers. The agency shall release all information subject
25 to disclosure that does not cause substantial prejudice, including
26 any documents that have otherwise become available.
27 (iv) In an action to compel disclosure brought pursuant to
28 Section 6258 of the Government Code, an agency may justify
29 delay by filing an application to seal the basis for withholding, in
30 accordance with Rule 2.550 of the California Rules of Court, or
31 any successor rule, if disclosure of the written basis itself would
32 impact a privilege or compromise a pending investigation.
34 (B) If criminal charges are filed related to the incident in which
35 misconduct occurred or force was used, the agency may delay the
36 disclosure of records or information until a verdict on those charges

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Page 18 37 is returned at trial or, if a plea of guilty or no contest is entered,
38 the time to withdraw the plea pursuant to Section 1018.

Page 19 39 (C) During an administrative investigation into an incident
40 described in paragraph (1), the agency may delay the disclosure
1 of records or information until the investigating agency determines
2 whether the misconduct or use of force violated a law or agency
3 policy, but no longer than 180 days after the date of the employing
4 agency’s discovery of the misconduct or use of force, or allegation
5 of misconduct or use of force, by a person authorized to initiate
6 an investigation.

9 (8) A record of a complaint, or the investigations, findings, or
10 dispositions of that complaint, shall not be released pursuant to
11 this section if the complaint is frivolous, as defined in Section
12 128.5 of the Code of Civil Procedure, or if the complaint is
13 unfounded.

14 (9) The cost of copies of records subject to disclosure pursuant
15 to this subdivision that are made available upon the payment of
16 fees covering direct costs of duplication pursuant to subdivision
17 (b) of Section 6253 of the Government Code shall not include the
18 costs of editing or redacting the records.

19 (10) Except to the extent temporary withholding for a longer
20 period is permitted pursuant to paragraph (7), records subject to
21 disclosure under this subdivision shall be provided at the earliest
22 possible time and no later than 45 days from the date of a request
23 for their disclosure. For every day beyond 30 days after the date
24 which a record is to be disclosed, as required by this subdivision,
25 an agency shall be subject to a civil fine not to exceed one thousand
26 dollars (\$1,000) per day for each day that the records are not
27 disclosed.

28 (11) Notwithstanding subdivision (d) of Section 6259, a member
29 of the public who files a suit pursuant to Section 6258 of the
30 Government Code for records required by this subdivision that are
31 found to have been improperly withheld or improperly redacted
32 shall be entitled to twice the party’s reasonable costs and attorney’s
33 fees. Costs and fees awarded pursuant to this paragraph shall be
34 paid by the public agency.

35 (c) Notwithstanding subdivisions (a) and (b), a department or
36 agency shall release to the complaining party a copy of the
37 complaining party’s own statements at the time the complaint is
38 filed.

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SB 776

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Page 19 39 (d) Notwithstanding subdivisions (a) and (b), a department or
40 agency that employs peace or custodial officers may disseminate
Page 20 1 data regarding the number, type, or disposition of complaints
2 (sustained, not sustained, exonerated, or unfounded) made against
3 its officers if that information is in a form which does not identify
4 the individuals involved.

5 (e) Notwithstanding subdivisions (a) and (b), a department or
6 agency that employs peace or custodial officers may release factual
7 information concerning a disciplinary investigation if the officer
8 who is the subject of the disciplinary investigation, or the officer’s
9 agent or representative, publicly makes a statement they know to
10 be false concerning the investigation or the imposition of
11 disciplinary action. Information may not be disclosed by the peace
12 or custodial officer’s employer unless the false statement was
13 published by an established medium of communication, such as
14 television, radio, or a newspaper. Disclosure of factual information
15 by the employing agency pursuant to this subdivision is limited
16 to facts contained in the officer’s personnel file concerning the
17 disciplinary investigation or imposition of disciplinary action that
18 specifically refute the false statements made public by the peace
19 or custodial officer or their agent or representative.

21 (f) (1) The department or agency shall provide written
22 notification to the complaining party of the disposition of the
23 complaint within 30 days of the disposition.

24 (2) The notification described in this subdivision is not
25 conclusive or binding or admissible as evidence in any separate
26 or subsequent action or proceeding brought before an arbitrator,
27 court, or judge of this state or the United States.

28 (g) This section does not affect the discovery or disclosure of
29 information contained in a peace or custodial officer’s personnel
30 file pursuant to Section 1043 of the Evidence Code.

31 (h) This section does not supersede or affect the criminal
32 discovery process outlined in Chapter 10 (commencing with
33 Section 1054) of Title 6 of Part 2, or the admissibility of personnel
34 records pursuant to subdivision (a), which codifies the court
35 decision in *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

36 (i) Nothing in this chapter is intended to limit the public’s right
37 of access as provided for in *Long Beach Police Officers
38 Association v. City of Long Beach* (2014) 59 Cal.4th 59.

39 SEC. 4. Section 832.12 of the Penal Code is amended to read:

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Page 21 1 832.12. (a) Each department or agency in this state that
2 employs peace officers shall make a record of any investigations
3 of misconduct involving a peace officer in the officer’s general
4 personnel file or a separate file designated by the department or
5 agency. A peace officer seeking employment with a department
6 or agency in this state that employs peace officers shall give written
7 permission for the hiring department or agency to view the officer’s
8 general personnel file and any separate file designated by a
9 department or agency.

10 (b) Prior to employing any peace officer, each department or
11 agency in this state that employs peace officers shall request, and
12 the hiring department or agency shall review, any records made
13 available pursuant to subdivision (a).

14 SEC. 5. Section 832.13 is added to the Penal Code, to read:

15 832.13. Every person employed as a peace officer shall
16 immediately report all uses of force by the officer to the officer’s
17 department or agency.

18 SEC. 6. (a) Section 1.5 of this bill incorporates amendments
19 to Section 1045 of the Evidence Code proposed by both this bill
20 and Senate Bill 1220. That section of this bill shall only become
21 operative if (1) both bills are enacted and become effective on or
22 before January 1, 2021, (2) each bill amends Section 1045 of the
23 Evidence Code, and (3) this bill is enacted after Senate Bill 1220,
24 in which case Section 1 of this bill shall not become operative.

25 (b) Section 3.5 of this bill incorporates amendments to Section
26 832.7 of the Penal Code proposed by both this bill and Senate Bill
27 731. That section of this bill shall only become operative if (1)
28 both bills are enacted and become effective on or before January
29 1, 2021, (2) each bill amends Section 832.7 of the Penal Code, and
30 (3) this bill is enacted after Senate Bill 731, in which case Section
31 3 of this bill shall not become operative.

33 SEC. 7. If the Commission on State Mandates determines that
34 this act contains costs mandated by the state, reimbursement to
35 local agencies and school districts for those costs shall be made
36 pursuant to Part 7 (commencing with Section 17500) of Division
37 4 of Title 2 of the Government Code.

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PROPOSED AMENDMENTS TO SENATE BILL NO. 803
AMENDED IN ASSEMBLY AUGUST 24, 2020
AMENDED IN ASSEMBLY JULY 27, 2020
AMENDED IN SENATE JUNE 18, 2020
AMENDED IN SENATE MARCH 26, 2020



RN2015749

SENATE BILL

No. 803

Introduced by Senator Beall

(Principal coauthor: Assembly Member Waldron)

(Coauthors: Senators Mitchell, Wiener, and Wilk)

(Coauthors: Assembly Members Aguiar-Curry, Arambula, Carrillo, Fong, Gabriel, Cristina Garcia, Grayson, Ramos, Reyes, Robert Rivas, Weber, and Wicks)

January 8, 2020

An act to add Article 1.4 (commencing with Section 14045.10) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to ~~Medi-Cal, and making an appropriation therefor.~~ *Medi-Cal.*

Amendment 1

LEGISLATIVE COUNSEL'S DIGEST

SB 803, as amended, Beall. Mental health services: peer support specialist certification.

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law establishes a schedule of benefits under the Medi-Cal program and provides for various services, including

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behavioral and mental health services that are rendered by Medi-Cal enrolled providers.

This bill would require the department, by July 1, 2022, to establish statewide requirements for counties to use in developing certification programs for the certification of peer support specialists, who are individuals who self-identify as having lived experience with the process of recovery from mental illness, substance use disorder, or both. The bill would authorize a county, or an agency that represents a county, to develop a peer support specialist certification program and certification fee schedule, both of which would be subject to department approval. The bill would require the department to seek any federal waivers it deems necessary to establish a demonstration or pilot project for the provision of peer support services in a county that agrees to participate in and fund the project, as specified.

~~(1) Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law establishes a schedule of benefits under the Medi-Cal program and provides for various services, including behavioral and mental health services that are rendered by Medi-Cal enrolled providers.~~

~~This bill would establish a peer support specialist certification program administered by the department, as prescribed.~~

~~This bill would require the department to conduct specified activities relating to the certification of peer support specialists, including establishing a certifying body to provide for a statewide certification for peer support specialists and determining curriculum and core competencies, as specified, required for certification of an individual as a peer support specialist. The bill would authorize the department, subject to federal approval, to delegate certain aspects of this process to a single, qualified county entity, as specified, and to contract with that entity to identify up to 3 certifying bodies that meet state standards and have the ability to provide state peer support specialist certification. The bill would require the department to approve the selection of the certifying bodies identified by the designated county entity that meet state standards, and authorize those bodies to provide state peer support specialist certification, as specified. The bill would require the department to seek any federal waivers to achieve specified objectives, such as including peer support specialist services as a distinct service~~

95

~~type under the Medi-Cal program. The bill would authorize the department to establish a certification fee schedule and to require remittance of fees as contained in that schedule to support the department’s activities related to the ongoing administration of the peer support specialist certification program. The bill would create the Peer Support Specialist Certification Fee Fund for the deposit of the certification fees remitted to the department, as specified, and would require moneys in the fund to be continuously appropriated to the department for purposes of the peer support specialist program. The bill would require Medi-Cal reimbursement for peer support specialist services to be implemented only if, and to the extent that, federal financial participation is available and the department obtains all necessary federal approvals. The bill would authorize the department to implement, interpret, or make specific its provisions by various means, including plan letters, without taking regulatory action, until regulations are adopted, and would require the department to adopt regulations by January 1, 2022.~~

~~(2) Existing law, the Mental Health Services Act (MHSA), an initiative measure enacted by the voters as Proposition 63 at the November 2, 2004, statewide general election, establishes the continuously appropriated Mental Health Services Fund to fund various county mental health programs. The act provides that it may be amended by the Legislature by a 2/3 vote of each house as long as the amendment is consistent with, and furthers the intent of, the act, and that the Legislature may also clarify procedures and terms of the act by majority vote.~~

~~For the 2020–21 and 2021–22 fiscal years, this bill would authorize the department to use funding provided through the MHSA, upon appropriation and to the extent authorized by the MHSA, to fund state administrative costs related to developing and administering the peer support specialist certification program, and would require those MHSA funds to be available for purposes of claiming federal financial participation under the Medicaid program. The bill would provide that this provision does not constitute a change in the MHSA, but is a clarification of a funding purpose that is consistent with the intent of the MHSA.~~

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

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

Page 3 1 SECTION 1. This act shall be known, and may be cited, as the
2 Peer Support Specialist Certification Program Act of 2020.

3 SEC. 2. Article 1.4 (commencing with Section 14045.10) is
4 added to Chapter 7 of Part 3 of Division 9 of the Welfare and
5 Institutions Code, to read:

6
7 Article 1.4. Peer Support Specialist Certification Program

+
9 14045.10. The Legislature finds and declares all of the
10 following:

11 ~~(a) With the enactment of the Mental Health Services Act in~~
12 ~~2004, support has been on the rise to include peer providers,~~
13 ~~identified as consumers, parents, and family members, for the~~
14 ~~provision of services.~~

15 ~~(b)~~
+ (a) Peer providers in California provide individualized support,
16 coaching, facilitation, and education to clients with mental health
17 care needs and substance use disorders in a variety of settings.
18 Yet, no statewide scope of practice, standardized curriculum,
19 training standards, supervision standards, or certification protocol
20 is available.

Amendment 2

Page 4 1 ~~(c)~~
+ (b) The United States Department of Veterans Affairs and at
2 least 48 states utilize standardized curricula and certification
3 protocols for peer support services.

4 ~~(d)~~
+ (c) The federal Centers for Medicare and Medicaid Services
5 (CMS) recognizes that the experiences of peer support specialists,
6 as part of an evidence-based model of care, can be an important
7 component in a state’s delivery of effective mental health and
8 substance use disorder treatment. The CMS encourages states to
9 offer comprehensive programs.

Amendment 3

10 ~~(e)~~
+ (d) A substantial number of research studies demonstrate that
11 peer supports improve client functioning, increase client
12 satisfaction, reduce family burden, alleviate depression and other
13 symptoms, reduce homelessness, reduce hospitalizations and

Amendment 4

Amendment 5

PROPOSED AMENDMENTS

Page 4 14 hospital days, increase client activation, and enhance client
 15 self-advocacy.
 16 ~~(f)~~
 + (e) Certification can increase the diversity and effectiveness of
 17 the behavioral health workforce through the use of peers with lived
 18 experience.
 19 14045.11. It is the intent of the Legislature that the peer support
 20 specialist certification program, established under this article,
 21 achieve all of the following:
 22 (a) Support the ongoing provision of services for ~~beneficiaries~~
 23 *individuals* experiencing mental health care needs, substance use
 24 disorder needs, or both, by certified peer support specialists.
 25 (b) Support coaching, linkage, and skill building of ~~beneficiaries~~
 26 *individuals* with mental health needs, substance use disorder needs,
 27 or both, and to families or significant support persons.
 28 (c) Increase family support by building on the strengths of
 29 families and helping them achieve a better understanding of mental
 30 illness in order to help ~~beneficiaries~~ *individuals* achieve desired
 + outcomes.
 31 ~~(d) Provide part of a continuum of services, in conjunction with~~
 32 ~~other community mental health services and other substance use~~
 33 ~~disorder treatment.~~
 34 ~~(e) Collaborate~~
 + (d) Support collaboration with others providing care or support
 35 to the ~~beneficiary~~ *individual* or family.
 36 ~~(f)~~
 + (e) Assist parents, families, and ~~beneficiaries~~ *individuals* in
 37 developing coping mechanisms and problem-solving skills in order
 38 to help ~~beneficiaries~~ *individuals* achieve desired outcomes.
 39 ~~(g)~~
 + (f) Promote skill building for ~~beneficiaries~~ *individuals* in the
 40 areas of socialization, recovery, self-sufficiency, self-advocacy,
 Page 5 1 development of natural supports, and maintenance of skills learned
 2 in other support services.
 3 ~~(h)~~
 + (g) Encourage employment under the peer support specialist
 4 certification to reflect the culture, ethnicity, sexual orientation,
 5 gender identity, mental health service experiences, and substance
 6 use disorder experiences of the ~~people whom they~~ *individuals the*
 + *peer support specialists* serve.

Amendment 6

Amendment 7

Amendment 8

Amendment 9

Amendment 10

**Amendment 11
Amendments 12 & 13**

**Amendment 14
Amendments 15 & 16**

Amendment 17

Amendment 18

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Page 5 7 14045.12. For purposes of this article, the following definitions
8 apply:
9 (a) “Certification” means the activities ~~of the certifying body~~
10 related to the verification that an individual has met all of the
11 requirements under this article and that the individual may provide
12 ~~mental health services and substance use disorder treatment~~ *peer*
13 *support specialist services* pursuant to this article.
14 (b) “Certified” means all federal and state requirements have
15 been satisfied by an individual who is seeking designation under
16 this article, including completion of curriculum and training
17 requirements, testing, and agreement to uphold and abide by the
18 code of ethics.
19 (c) “Code of ethics” means the standards to which a peer support
20 specialist is required to adhere.
21 (d) “Core competencies” means the foundational and essential
22 knowledge, skills, and abilities required for peer specialists.
23 (e) “Cultural competence” means a set of congruent behaviors,
24 attitudes, and policies that come together in a system or agency
25 that enables that system or agency to work effectively in
26 cross-cultural situations. A culturally competent system of care
27 acknowledges and incorporates, at all levels, the importance of
28 language and culture, intersecting identities, assessment of
29 cross-cultural relations, knowledge and acceptance of dynamics
30 of cultural differences, expansion of cultural knowledge, and
31 adaptation of services to meet culturally unique needs to provide
32 services in a culturally competent manner.
33 (f) “Department” means the State Department of Health Care
34 Services.
35 (g) “Peer support specialist” means ~~a person~~ *an individual* who
36 is 18 years of age or older ~~and who is a person who~~ *older, who* has
37 self-identified as having lived experience with the process of
38 recovery from mental illness, substance use disorder, or both, either
39 as a consumer of these services or as the parent or family member
+ of the ~~consumer~~ *consumer, and who has been granted certification*
+ *under a county peer support specialist certification program.*
Page 6 1 (h) “Peer support specialist services” means culturally competent
2 services that promote engagement, socialization, recovery,
3 self-sufficiency, self-advocacy, development of natural supports,
4 ~~and identification of strengths, and maintenance of skills learned~~
5 ~~in other support services.~~ *strengths.* Peer support specialist services

Amendment 19

Amendment 20

**Amendment 21
Amendment 22**

Amendment 23

**Amendment 24
Amendment 25**

PROPOSED AMENDMENTS

Page 6 6 include, but are not limited to, *prevention services*, support,
7 coaching, facilitation, or education to Medi-Cal beneficiaries that
8 is individualized to the beneficiary and is conducted by a certified
+ peer support specialist.

9 (i) “Recovery” means a process of change through which an
10 individual improves their health and wellness, lives a self-directed
11 life, and strives to reach their full potential. This process of change
12 recognizes cultural diversity and inclusion, and honors the different
13 routes to resilience and recovery based on the individual and their
14 cultural community.

15 14045.13. By July 1, ~~2021~~, 2022, *subject to Section 14045.19*,
16 the department shall do all of the following:

17 (a) ~~(1) Establish a certifying body, either through contract or~~
18 ~~through an interagency agreement, to provide for the certification~~
19 ~~activities described in this article unless the department makes the~~
20 ~~election described in paragraph (2).~~

21 ~~(2) If the Centers for Medicare and Medicaid Services allows~~
22 ~~the state to delegate the peer support specialist certification~~
23 ~~selection process to a qualified county entity and continues to allow~~
24 ~~the federal Medicaid match for peer support specialists certified~~
25 ~~pursuant to that selection process, as described in this subdivision,~~
26 ~~the department may delegate this function to a single county entity~~
27 ~~that agrees to contract with the department for this purpose, in~~
28 ~~accordance with Section 14045.135.~~

29 ~~(3) If the Centers for Medicare and Medicaid Services does not~~
30 ~~allow the department to delegate the peer support specialist~~
31 ~~certification process to a county entity as described in paragraph~~
32 ~~(2), the department shall retain responsibility for the program as~~
33 ~~provided in this article.~~

34 ~~(b) Provide for a statewide certification for peer support~~
35 ~~specialists, as contained in federal guidance in State Medicaid~~
36 ~~Director Letter No. 07-011, issued by the federal Centers for~~
37 ~~Medicare and Medicaid Services on August 15, 2007.~~

+ ~~(a) Establish statewide requirements for counties, or an agency~~
+ ~~representing counties, to use in developing certification programs~~
+ ~~for the certification of peer support specialists.~~

38 (e)

+ (b) Define the *qualifications*, range of responsibilities, practice
39 guidelines, and supervision standards for peer support specialists
40 by ~~utilizing specialists. The department may utilize best practice~~

Amendment 29

Amendment 30

Amendments 31 & 32

Amendment 33

PROPOSED AMENDMENTS

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1 materials published by the federal Substance Abuse and Mental
2 Health Services Administration, the United States Department of
3 Veterans Affairs, and related notable experts in the field as a basis
+ for ~~development~~. *development of these definitions.*
4 (d)
+ (c) Determine curriculum and core competencies required for
5 certification of an individual as a peer support specialist, including
6 curriculum that may be offered in areas of specialization, including,
7 but not limited to, transition-age youth, veterans, gender identity,
8 sexual orientation, and any other areas of specialization identified
9 by the department. Core-competencies-based curriculum shall
10 include, at a minimum, training related to all of the following
11 elements:
12 (1) The concepts of hope, recovery, and wellness.
13 (2) The role of advocacy.
14 (3) The role of consumers and family members.
15 (4) Psychiatric rehabilitation skills and service delivery, and
16 addiction recovery principles, including defined practices.
17 (5) Cultural competence training.
18 (6) Trauma-informed care.
19 (7) Group facilitation skills.
20 (8) Self-awareness and self-care.
21 (9) Cooccurring disorders of mental health and substance use.
22 (10) Conflict resolution.
23 (11) Professional boundaries and ethics.
24 (12) Preparation for employment opportunities, including study
25 and test-taking skills, application and résumé preparation,
26 interviewing, and other potential requirements for employment.
27 (13) Safety and crisis planning.
28 (14) Navigation of, and referral to, other services.
29 (15) Documentation skills and standards.
30 (16) Confidentiality.
31 (e)
+ (d) Specify *peer support specialist employment* training
32 requirements, including core-competencies-based training and
33 specialized training necessary to become certified under this article,
34 ~~allowing for multiple qualified training entities, and requiring~~ *and*
35 *require* training to include people with lived experience as
+ consumers and family members.
36 (f)

Amendment 34

Amendment 35

Amendments 36 & 37

Amendment 38

Amendment 39

PROPOSED AMENDMENTS

Page 7 + (e) Establish a code of ethics.
 37 ~~(g)~~
 + (f) Determine continuing education requirements for biennial
 38 certification renewal.
 39 ~~(h)~~
 + (g) Determine the process for *initial certification issuance and*
 + biennial certification renewal.

Page 8 1 ~~(i)~~
 + (h) Determine a process for investigation of complaints and
 2 corrective action, including suspension and revocation of
 3 ~~certification.~~ *certification and appeals.*
 4 ~~(j)~~
 + (i) Determine a process for an individual employed as a peer
 5 support specialist on January 1, ~~2021~~, 2022, to obtain certification
 6 under this article.
 + (j) *Determine requirements for peer support specialist*
 + *certification reciprocity between counties, and for peer support*
 + *specialists from out of state.*
 + (k) *Seek any federal approvals, related to the statewide*
 + *certification standards, that it deems necessary to implement this*
 + *article. For any federal approvals that the department deems*
 + *necessary related to the statewide certification standards, this*
 + *article shall be implemented only if and to the extent that the*
 + *department obtains those federal approvals.*
 7 ~~14045.135. (a) If the department delegates its authority to a~~
 8 ~~designated county entity as provided in paragraph (2) of~~
 9 ~~subdivision (a) of Section 14145.13, the county entity shall convene~~
 10 ~~a panel of experts on peer support specialist certification, including~~
 11 ~~experts with lived experience, to identify up to three certifying~~
 12 ~~bodies that meet state standards and have the ability to provide~~
 13 ~~state peer support specialist certification.~~
 14 ~~(b) The panel of experts shall review peer support specialist~~
 15 ~~training program applicants to ensure that the programs align with~~
 16 ~~the core competencies, standards, and practice guidelines to~~
 17 ~~conduct peer support specialist certification training and approve~~
 18 ~~the training programs.~~
 19 ~~(c) In developing statewide standards for the peer support~~
 20 ~~specialist program, the department shall determine how often the~~
 21 ~~county entity shall reconvene a panel of experts on peer support~~

- Amendment 40**
- Amendments 41 & 42**
- Amendment 43**
- Amendment 44**
- Amendment 45**
- Amendment 46**
- Amendment 47**
- Amendment 48**

PROPOSED AMENDMENTS

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Page 8 22 specialist certification to ensure appropriate ongoing oversight of
 23 the state certification program.
 24 ~~(d) The department shall approve the selection of the certifying~~
 25 ~~bodies identified by the designated county entity that meet state~~
 26 ~~standards, and authorize these bodies to provide state peer support~~
 27 ~~specialist certification, in a manner to be determined by the~~
 28 ~~department.~~
 + 14045.14. (a) Subject to department approval, a county, or
 + an agency representing the county, may develop a peer support
 + specialist certification program in accordance with this article
 + and any standards established by the department. That county, or
 + an agency representing that county, shall oversee and enforce the
 + certification requirements developed pursuant to this article. To
 + request department approval of the county peer support specialist
 + program, a county, or an agency representing the county, shall
 + do all of the following:
 + (1) Submit to the department a peer support specialist program
 + plan describing how the peer support specialist program will meet
 + all of the federal and state requirements for the certification and
 + oversight of peer support specialists.
 + (2) Submit to periodic reviews conducted by the department to
 + ensure adherence to all federal and state requirements.
 + (3) Submit annual peer support specialist program reports to
 + the department.
 + (b) If a county chooses not to develop peer support specialist
 + certification programs in accordance with this article, the county
 + may fund peer programs to the extent those programs meet all
 + requirements of the applicable funding source.
 + (c) The Legislature finds that peer support specialist certification
 + is conducted at the state level in other states, but this section passes
 + this responsibility to counties. Subject to an appropriation by the
 + Legislature, the state shall fund the startup costs to implement this
 + section.
 29 ~~14045.14. (a) An applicant for~~
 + 14045.15. (a) To receive a certification under this ~~article~~
 30 ~~article, an applicant shall meet all of the following requirements:~~
 31 (1) Be at least 18 years of age.
 32 (2) Possess a high school diploma or equivalent degree.
 33 (3) Be self-identified as having experience with the process of
 34 recovery from mental illness or substance use disorder ~~treatment~~

Amendments 49 & 50

Amendment 51

PROPOSED AMENDMENTS

Page 8 35 either as a consumer of these services or as the parent or family
36 member of the consumer.
37 (4) Be willing to share their experience.
38 ~~(5) Demonstrate leadership and advocacy skills.~~
39 ~~(6)~~
+ (5) Have a strong dedication to recovery.
40 (7)
+ (6) Agree, in writing, to adhere to a code of ethics.

Page 9 1 (8)
+ (7) Successfully complete the curriculum and training
2 requirements for a peer support specialist.
3 (9)
+ (8) Pass a certification examination approved by the department
4 for a peer support specialist.
5 (b) To maintain certification under this article, a *certified* peer
6 support specialist shall meet both of the following requirements:
7 (1) Adhere to the code of ethics and biennially sign an
8 affirmation.
9 (2) Complete any required continuing education, training, and
10 recertification requirements.
11 ~~14045.15. (a) This article does not imply that an individual~~
12 ~~who is certified pursuant to this article is qualified to, or authorized~~
13 ~~to, diagnose an illness, prescribe medication, or provide clinical~~
14 ~~services.~~
15 ~~(b) This article does not alter the scope of practice for a health~~
16 ~~care professional or authorize the delivery of health care services~~
17 ~~in a setting or manner that is not authorized pursuant to the~~
18 ~~Business and Professions Code or the Health and Safety Code.~~
19 ~~14045.16. The department shall consult with the Office of~~
20 ~~Statewide Health Planning and Development, peer support and~~
21 ~~family organizations, mental health services and substance use~~
22 ~~disorder treatment providers and organizations, the County~~
23 ~~Behavioral Health Directors Association of California, and the~~
24 ~~California Behavioral Health Planning Council in implementing~~
25 ~~this article. Consultation shall include, at a minimum, quarterly~~
26 ~~stakeholder meetings. The department may additionally conduct~~
27 ~~technical workgroups upon the request of stakeholders.~~
28 ~~14045.17. To facilitate early intervention for mental health~~
29 ~~services, community health workers may partner with peer support~~
30 ~~specialists to improve linkage to services for beneficiaries.~~

Amendment 52

Amendment 53

Amendment 54

Amendment 55

Amendment 56

Amendment 57

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Page 9 31 14045.18. ~~(a) If the department establishes a certifying body
32 pursuant to paragraph (1) of subdivision (a) of Section 14045.13,
33 the department may establish a certification fee schedule and may
34 require remittance as contained in the certification fee schedule
35 for the purpose of supporting the activities associated with the
36 ongoing administration of the peer support specialist certification
37 program. Certification fees charged by the department shall
38 reasonably reflect the expenditures directly applicable to the
39 ongoing administration of the peer support specialist certification
40 program.~~

Page 10 1 ~~(b) The Peer Support Specialist Certification Fee Fund is hereby
2 created. If the department establishes a certification fee schedule
3 pursuant to subdivision (a), certification fees remitted to the
4 department shall be deposited into the fund and continuously
5 appropriated to the department for the sole purpose of
6 implementing the peer support specialist certification program.~~

7 ~~(c) Notwithstanding subdivisions (a) and (b), if a county entity
8 is designated by the department pursuant to paragraph (2) of
9 subdivision (a) of Section 14045.13, that entity may establish a
10 certification fee schedule for the purpose of supporting the
11 activities associated with the ongoing administration of the peer
12 support specialist certification program. The department shall
13 review and approve the county entity's fee schedule prior to its
14 implementation to ensure that the schedule reasonably reflects the
15 expenditures directly applicable to the ongoing administration of
16 the peer support specialist certification program.~~

17 ~~(d) Whether the department establishes a peer support specialist
18 certifying body or delegates the selection process duties to a county
19 entity, any operating costs for the peer support specialist program
20 not covered by certification fees shall be borne by the state.~~

21 14045.19. The department shall seek any federal waivers, as
22 necessary, to do all of the following:

24 ~~(a) Include a peer support specialist certified pursuant to this
25 article as a provider type for purposes of this chapter.~~

26 ~~(b) Include peer support specialist services as a distinct service
27 type for purposes of this chapter, which may be provided to eligible
28 Medi-Cal beneficiaries who receive specialty mental health services
29 or Drug Medi-Cal services in any county, including any county
30 that has implemented a Drug Medi-Cal organized delivery system,
31 or both, if that county elects to do both of the following:~~

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Page 10 32 ~~(1) Opt in to provide peer support specialist services.~~
 33 ~~(2) Fund the nonfederal share of those services.~~
 34 ~~(c) Develop and implement one or more billing codes,~~
 35 ~~reimbursement rates, and claiming requirements for peer support~~
 36 ~~specialist services.~~
 37 ~~(d) Delegate responsibility for the state peer support specialist~~
 38 ~~certification process, in accordance with paragraph (2) of~~
 39 ~~subdivision (a) of Section 14045.13.~~

Page 11 1 ~~14045.20. Medi-Cal reimbursement for peer support specialist~~
 2 ~~services shall be implemented only if, and to the extent that, federal~~
 3 ~~financial participation under Title XIX of the federal Social~~
 4 ~~Security Act (42 U.S.C. Sec. 1396 et seq.) is available and all~~
 5 ~~necessary federal approvals have been obtained.~~

6 ~~14045.21. For the purpose of implementing this article, the~~
 7 ~~department may enter into exclusive or nonexclusive contracts on~~
 8 ~~a bid or negotiated basis, including contracts for the purpose of~~
 9 ~~obtaining subject matter expertise or other technical assistance.~~

10 ~~14045.22. Notwithstanding Chapter 3.5 (commencing with~~
 11 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
 12 ~~Code, the department may implement, interpret, or make specific~~
 13 ~~Sections 14045.13, 14045.14, 14045.18, and 14045.20 by means~~
 14 ~~of informal notices, plan letters, plan or provider bulletins, or~~
 15 ~~similar instructions, without taking regulatory action, until the~~
 16 ~~time regulations are adopted. The department shall adopt~~
 17 ~~regulations by January 1, 2022, in accordance with the~~
 18 ~~requirements of Chapter 3.5 (commencing with Section 11340) of~~
 19 ~~Part 1 of Division 3 of Title 2 of the Government Code.~~

20 ~~14045.23. To the extent authorized by the Mental Health~~
 21 ~~Services Act pursuant to subdivision (d) of Section 5892, and if~~
 22 ~~authorized under the annual Budget Act, in the 2020–21 fiscal~~
 23 ~~year, the department may fund state administrative costs, including,~~
 24 ~~but not limited to, costs for delegated activities, related to~~
 25 ~~developing and administering the peer support specialist~~
 26 ~~certification program, as described under Section 14045.13. Subject~~
 27 ~~to an express appropriation in the Budget Act of 2021 for the~~
 28 ~~2021–22 fiscal year, and to the extent authorized by the Mental~~
 29 ~~Health Services Act pursuant to subdivision (d) of Section 5892,~~
 30 ~~the department may fund state administrative costs related to~~
 31 ~~developing and administering the peer support specialist~~
 32 ~~certification program, as described under Section 14045.13. To~~

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Page 11 33 the extent permissible, those funds shall be available for purposes
 34 of claiming federal financial participation under Title XIX of the
 35 federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

+ 14045.16. *This article does not authorize an individual who is
 + certified pursuant to this article to diagnose an illness, prescribe
 + medication, or provide clinical services.*

+ 14045.17. *The department shall solicit stakeholder input that
 + may include input from the Office of Statewide Health Planning
 + and Development, peer support and family organizations, mental
 + health services and substance use disorder treatment providers
 + and organizations, the County Behavioral Health Directors
 + Association of California, and the California Behavioral Health
 + Planning Council in implementing this article. Consultation shall
 + include regular stakeholder meetings. The department may
 + additionally conduct technical workgroups upon the request of
 + stakeholders.*

+ 14045.18. *A participating county, or an agency representing
 + a participating county, is authorized to establish a certification
 + fee schedule for the purpose of supporting the activities associated
 + with the ongoing administration of the peer support specialist
 + certification program. Before the fee schedule may be implemented,
 + the department shall review and either approve or disapprove the
 + fee schedule of the participating county or an agency representing
 + the participating county.*

+ 14045.19. (a) *The department shall seek any federal waivers
 + it deems necessary to establish a demonstration or pilot project
 + for the provision of peer support services in counties that agree
 + to participate and provide the necessary nonfederal share funding
 + for the demonstration or pilot project. The demonstration or pilot
 + project shall do all of the following:*

+ (1) *Include a peer support specialist certified pursuant to this
 + article as a Medi-Cal provider type for purposes of the
 + demonstration or pilot project.*

+ (2) *Include peer support specialist services as a distinct service
 + type in counties that opt in to the demonstration or pilot project.*

+ (3) *Develop and implement one or more billing codes,
 + reimbursement rates, and claiming requirements for peer support
 + specialist services.*

+ (b) (1) *This section does not require a county to participate in
 + a demonstration or pilot project pursuant to this section. A county*

+ *that opts to participate in a demonstration or pilot project and provide the necessary nonfederal share funding shall be considered to do so voluntarily for purposes of all state and federal laws.*

+ *(2) A county that opts to participate in a demonstration or pilot project pursuant to this section agrees to fund the nonfederal share of any applicable expenditures through certified public expenditures or intergovernmental transfers in accordance with Section 433.51 of Title 42 of the Code of Federal Regulations. Each participating county shall certify that the local funds it uses to fund the nonfederal share of expenditures pursuant to this section qualify for federal financial participation pursuant to applicable federal Medicaid laws and any terms of federal approval, in the form and manner as required by the department.*

+ *(3) Demonstration or pilot projects developed and implemented pursuant to this section shall not constitute a mandate of a new program or higher level of service that has an overall effect of increasing the costs mandated by the 2011 realignment legislation for the counties that opt in to a demonstration or pilot project.*

+ *(4) General Fund moneys shall not be used to fund the nonfederal share of any expenditures made pursuant to a demonstration or pilot project under this section.*

+ *(c) This section shall be implemented only if and to the extent that the department obtains any necessary federal approvals, and federal financial participation is available and is not otherwise jeopardized.*

+ *14045.20. For the purpose of implementing this article, the department may enter into exclusive or nonexclusive contracts on a bid or negotiated basis, including contracts for the purpose of obtaining subject matter expertise or other technical assistance. Contracts entered into or amended pursuant to this section shall be exempt from Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, and the State Administrative Manual, and shall be exempt from the review or approval of any division of the Department of General Services or the Department of Technology.*

+ *14045.21. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific*

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+ *this article, in whole or in part, by means of plan or county letters,
+ information notices, plan or provider bulletins, or other similar
+ instructions, without taking any further regulatory action.*

Page 11 36 ~~SEC. 3.—Section 14045.23 of the Welfare and Institutions Code,~~
37 ~~as added by Section 2 of this measure, does not constitute a change~~
38 ~~in the Mental Health Services Act, but is a clarification of a funding~~
Page 12 1 ~~purpose under existing law that is consistent with the intent of the~~
2 ~~act.~~

Amendment 58

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PROPOSED AMENDMENTS

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PROPOSED AMENDMENTS TO SENATE BILL NO. 1159

AMENDED IN ASSEMBLY AUGUST 25, 2020

AMENDED IN ASSEMBLY AUGUST 12, 2020

AMENDED IN ASSEMBLY AUGUST 3, 2020

AMENDED IN SENATE JUNE 18, 2020

AMENDED IN SENATE APRIL 22, 2020

AMENDED IN SENATE APRIL 1, 2020



RN2015992

SENATE BILL

No. 1159

Introduced by Senator Hill
(Principal coauthor: Assembly Member Daly)

February 20, 2020

An act to add Section 77.8 to, and to add and repeal Sections 3212.86, 3212.87, and 3212.88 of, the Labor Code, relating to workers' ~~compensation~~ *compensation, and declaring the urgency thereof, to take effect immediately.*

Amendment 1

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Hill. Workers' compensation: COVID-19: critical workers.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee, as defined, for injuries sustained in the course of employment. Existing law creates a disputable presumption that specified injuries sustained in the course of employment of a specified member of law enforcement or a specified first responder arose out of and in the course of the employment.

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Existing law governs the procedures for filing a claim for workers’ compensation, including filing a claim form, and provides that an injury is presumed compensable if liability is not rejected within 90 days after the claim form is filed, as specified. Existing case law provides for how certain presumptions may be rebutted.

This bill would define “injury” for an employee to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, until January 1, 2023. The bill would create a disputable presumption, as specified, that the injury arose out of and in the course of the employment and is compensable, for specified dates of injury. The bill would limit the applicability of the presumption under certain circumstances. The bill would require an employee to exhaust their paid sick leave benefits and meet specified certification requirements before receiving any temporary disability benefits or, for police officers, firefighters, and other specified employees, a leave of absence. The bill would also make a claim relating to a COVID-19 illness presumptively compensable, as described above, after 30 days or 45 days, rather than 90 days. Until January 1, 2023, the bill would allow for a presumption of injury for all employees whose fellow employees at their place of employment experience specified levels of positive testing, and whose employer has 5 or more employees.

This bill would require the Commission on Health and Safety and Workers’ Compensation to conduct a study of the impacts of COVID-19 and the specific presumptions created by this bill and report its findings to the Legislature and the Governor, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

Page 2 1 SECTION 1. Section 77.8 is added to the Labor Code, to read:
2 77.8. The Commission on Health and Safety and Workers’
3 Compensation shall conduct a study of the impacts claims of
4 COVID-19 have had on the workers’ compensation system,
5 including overall impacts on indemnity benefits, medical benefits,
6 and death benefits, including differences in the impacts across
7 differing occupational groups, and including the effect of Sections
Page 3 1 3212.87 and 3212.88. A preliminary report or a final report shall

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Page 3 2 be delivered to the Legislature, pursuant to Section 9795 of the
3 Government Code, and the Governor by December 31, 2021, and
4 the final report shall be delivered to the Legislature, pursuant to
5 Section 9795 of the Government Code, and the Governor no later
6 than April 30, 2022.

8 SEC. 2. Section 3212.86 is added to the Labor Code,
9 immediately following Section 3212.85, to read:

10 3212.86. (a) This section applies to any employee with a
11 COVID-19-related illness.

12 (b) The term “injury,” as used in this division, includes illness
13 or death resulting from COVID-19 if both of the following
14 circumstances apply:

15 (1) The employee has tested positive for or was diagnosed with
16 COVID-19 within 14 days after a day that the employee performed
17 labor or services at the employee’s place of employment at the
18 employer’s direction.

21 (2) The day referenced in paragraph (1) on which the employee
22 performed labor or services at the employee’s place of employment
23 at the employer’s direction was on or after March 19, 2020, and
24 on or before July 5, 2020. The date of injury shall be the last date
25 the employee performed labor or services at the employee’s place
26 of employment at the employer’s direction.

27 (3) If paragraph (1) is satisfied through a diagnosis of
28 COVID-19, the diagnosis was done by a licensed physician and
30 surgeon holding an M.D. or D.O. degree or state licensed physician
31 assistant or nurse practitioner, acting under the review or
32 supervision of a physician and surgeon pursuant to standardized
33 procedures or protocols within their lawfully authorized scope of
34 practice, and that diagnosis is confirmed by testing or by a
35 COVID-19 serologic test within 30 days of the date of the
36 diagnosis.

37 (c) The compensation that is awarded for injury pursuant to this
38 section shall include full hospital, surgical, medical treatment,
39 disability indemnity, and death benefits, as provided by this
40 division.

Page 4 5 (d) (1) If an employee has paid sick leave benefits specifically
6 available in response to COVID-19, those benefits shall be used
7 and exhausted before any temporary disability benefits or benefits
8 under Section 4800, 4800.5, or 4850 are due and payable. If an
9 employee does not have those sick leave benefits, the employee

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Page 4 10 shall be provided temporary disability benefits or Section 4800,
11 4800.5, or 4850 benefits, if applicable, from the date of disability.
12 There shall not be a waiting period for temporary disability
13 benefits.

14 (2) To qualify for temporary disability or Section 4800, 4800.5,
15 or 4850 benefits under this section, an employee shall satisfy either
16 of the following:

17 (A) If the employee has tested positive or is diagnosed with
18 COVID-19 on or after May 6, 2020, the employee shall be certified
19 for temporary disability within the first 15 days after the initial
20 diagnosis, and shall be recertified for temporary disability every
21 15 days thereafter, for the first 45 days following diagnosis.

22 (B) If the employee has tested positive or was diagnosed with
23 COVID-19 before May 6, 2020, the employee shall have obtained
24 a certification, no later than May 21, 2020, documenting the period
25 for which the employee was temporarily disabled and unable to
26 work, and shall be recertified for temporary disability every 15
27 days thereafter, for the first 45 days following diagnosis.

28 (3) An employee shall be certified for temporary disability by
29 a physician holding a physician’s and surgeon’s license issued
30 pursuant to Chapter 5 (commencing with Section 2000) of Division
31 2 of the Business and Professions Code. If the employee has a
32 predesignated physician pursuant to subdivision (d) of Section
33 4600, is covered by a medical provider network pursuant to Article
34 2.3 (commencing with Section 4616) of Chapter 2 of Part 2, is
35 covered by a workers’ compensation health care organization
36 pursuant to Article 2 (commencing with Section 4600) of Chapter
37 2 of Part 2, or is covered by a group health plan, the certifying
38 physician shall be a physician and surgeon in that network,
39 organization, or plan. Otherwise, the certifying physician may be
40 a physician and surgeon of the employee’s choosing.

Page 5 1 (e) An injury described in subdivision (b) is presumed to arise
2 out of and in the course of the employment. This presumption is
3 disputable and may be controverted by other evidence. Unless
4 controverted, the appeals board is bound to find in accordance
5 with the presumption.

6 (f) Notwithstanding Section 5402, if liability for a claim of a
7 COVID-19-related illness is not rejected within 30 days after the
8 date the claim form is filed pursuant to Section 5401, the illness
9 shall be presumed compensable. The presumption of this

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Page 5 10 subdivision is rebuttable only by evidence discovered subsequent
11 to the 30-day period.
12 (g) The Department of Industrial Relations shall waive the right
13 to collect any death benefit payment due pursuant to Section 4706.5
14 arising out of claims covered by this section.
19 (h) This section applies to all pending matters except as
20 otherwise specified, including, but not limited to, pending claims
21 relying on Executive Order N-62-20. This section is not a basis to
22 rescind, alter, amend, or reopen any final award of workers’
23 compensation benefits.
24 (i) For purposes of this section:
26 (1) “COVID-19” means the 2019 novel coronavirus disease.
27 (2) “Place of employment” does not include an employee’s
28 residence.
29 (j) This section shall remain in effect only until January 1, 2023,
30 and as of that date is repealed.
32 SEC. 3. Section 3212.87 is added to the Labor Code, to read:
33 3212.87. (a) This section applies to the following employees:
34 (1) Active firefighting members, whether volunteers, partly
35 paid, or fully paid, of all of the following fire departments:
36 (A) A fire department of a city, county, city and county, district,
37 or other public or municipal corporation or political subdivision.
38 (B) A fire department of the University of California and the
39 California State University.
40 (C) The Department of Forestry and Fire Protection.
Page 6 1 (D) A county forestry or firefighting department or unit.
2 (2) Active firefighting members of a fire department that serves
3 a United States Department of Defense installation and who are
4 certified by the United States Department of Defense as meeting
5 its standards for firefighters.
6 (3) Active firefighting members of a fire department that serves
7 a National Aeronautics and Space Administration installation and
8 who adhere to training standards established in accordance with
9 Article 4 (commencing with Section 13155) of Chapter 1 of Part
10 2 of Division 12 of the Health and Safety Code.
11 (4) Active firefighting members of a fire department that
12 provides fire protection to a commercial airport regulated by the
13 Federal Aviation Administration (FAA) under Part 139
14 (commencing with Section 139.5) of Subchapter G of Chapter 1
15 of Title 14 of the Federal Code of Regulations and are trained and

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Page 6 16 certified by the State Fire Marshal as meeting the standards of Fire
 17 Control 5 and Section 139.319 of Title 14 of the Federal Code of
 18 Regulations
 19 (5) Peace officers, as defined in Section ~~830.1, subdivision (a)~~
 20 *830.1 of the Penal Code, subdivisions (a), (b), (e), (f), and (h) of*
 + ~~Section 830.2, and 830.2 of the Penal Code, subdivision (a) of~~
 + *Section 830.3 of the Penal Code, subdivisions (a) and (b) of Section*
 21 ~~830.37, 830.37 of the Penal Code, subdivisions (a) and (b) of~~
 + *Section 830.5 of the Penal Code, and subdivision (a) of Section*
 + *830.53 of the Penal Code, who are primarily engaged in active*
 22 *law enforcement activities.*
 23 (6) (A) Fire and rescue services coordinators who work for the
 24 Office of Emergency Services.
 25 (B) For purposes of this paragraph, “fire and rescue services
 26 coordinators” means coordinators with any of the following job
 27 classifications: coordinator, senior coordinator, or chief
 28 coordinator.
 29 (7) An employee who provides direct patient care, or a custodial
 30 employee in contact with COVID-19 patients, who works at a
 31 health facility. For the purposes of this subdivision, “health facility”
 32 means a health facility as defined in subdivision (a), (b), (c), (m),
 33 or (n) of Section 1250 of the Health and Safety Code.
 35 (8) An authorized registered nurse, emergency medical
 36 technician-I, emergency medical technician-II, emergency medical
 37 technician-paramedic, as described in Chapter 2 (commencing
 38 with Section 1797.50) of Division 2.5 of the Health and Safety
 39 Code.

**Amendment 2
Amendments 3 & 4**

Amendment 5

Page 7 1 (9) An employee who provides direct patient care for a home
 2 health agency, as defined under Section 1727 of the Health and
 3 Safety Code.
 4 (10) Employees of health facilities, other than those described
 5 in paragraph (7). For these employees, the ~~presumption shall be~~
 6 ~~controverted with evidence that the employee did not have contact~~
 7 ~~with a health facility patient within the last 14 days who tested~~
 8 ~~positive for COVID-19. If the presumption is rebutted, the claim~~
 9 ~~shall be evaluated pursuant to Sections 3202.5 and 3600 of the~~
 10 ~~Labor Code. presumption shall not apply if the employer can~~
 + *establish that the employee did not have contact with a health*
 + *facility patient within the last 14 days who tested positive for*
 + *COVID-19. If it is determined that the presumption does not apply,*

Amendment 6

PROPOSED AMENDMENTS

Page 7

+ *the claim shall be evaluated pursuant to Sections 3202.5 and 3600.*
11 For the purposes of this subdivision, “health facility” means a
12 health facility, as defined in subdivision (a), (b), (c), (m), or (n) of
+ Section 1250 of the Health and Safety Code.

+ (11) *A provider of in-home supportive services under Article 7*
+ *(commencing with Section 12300) of Chapter 3 of Part 3 of*
+ *Division 9 of, or Sections 14132.95, 14132.952, and 14132.956*
+ *of, the Welfare and Institutions Code, when they provide the*
+ *in-home supportive services outside their own home or residence.*

13 (b) The term “injury,” as used in this division, includes illness
14 or death resulting from COVID-19 if all of the following
15 circumstances apply:

16 (1) The employee has tested positive for COVID-19 within 14
17 days after a day that the employee performed labor or services at
18 the employee’s place of employment at the employer’s direction.

22 (2) The day referenced in paragraph (1), on which the employee
23 performed labor or services at the employee’s place of employment
24 at the employer’s direction, was on or after July 6, 2020. The date
25 of injury shall be the last date the employee performed labor or
26 services at the employee’s place of employment at the employer’s
27 direction prior to the positive test.

33 (c) The compensation that is awarded for injury pursuant to this
34 section shall include full hospital, surgical, medical treatment,
35 disability indemnity, and death benefits, as provided by this
36 division.

Page 8

1 (d) ~~(1)~~ If an employee has paid sick leave benefits specifically
2 available in response to COVID-19, those benefits shall be used
3 and exhausted before any temporary disability benefits or benefits
4 under Section 4800, 4800.5, or 4850 are due and payable. If an
5 employee does not have those sick leave benefits, the employee
6 shall be provided temporary disability benefits or Section 4850
7 benefits, if applicable, from the date of disability. There shall not
8 be a waiting period for temporary disability benefits.

9 ~~(2) To qualify for temporary disability benefits or benefits~~
10 ~~described in Section 4800, 4800.5, or 4850 pursuant to this section,~~
11 ~~an employee shall have tested positive or be diagnosed with~~
12 ~~COVID-19 on or after July 6, 2020.~~

28 (e) An injury described in subdivision (b) is presumed to arise
29 out of and in the course of the employment, except as provided in
30 this subdivision. This presumption is disputable and may be

Amendment 7

Amendment 8

Amendment 9

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Page 8 31 controverted by other evidence. Unless controverted, the appeals
32 board is bound to find in accordance with the presumption. This
33 presumption shall be extended to a person described in subdivision
34 (a) following termination of service for a period of 14 days,
35 commencing with the last date actually worked in the specified
36 capacity at the employee’s place of employment as described in
37 subdivision (b).

38 (f) Notwithstanding Section 5402, if liability for a claim of a
39 COVID-19-related illness is not rejected within 30 days after the
40 date the claim form is filed pursuant to Section 5401, the illness
Page 9 1 shall be presumed compensable. The presumption of this
2 subdivision is rebuttable only by evidence discovered subsequent
3 to the 30-day period.

4 (g) The Department of Industrial Relations shall waive the right
5 to collect any death benefit payment due pursuant to Section 4706.5
6 arising out of claims covered by this section.

7 (h) This section applies to all pending matters, unless otherwise
8 specified in this section, but shall not be a basis to rescind, alter,
9 amend, or reopen any final award of workers’ compensation
10 benefits.

11 (i) For purposes of this section:

12 (1) “COVID-19” means the 2019 novel coronavirus disease.

13 (2) Unless otherwise indicated, “test” or “testing” means a PCR
14 (Polymerase Chain Reaction) test approved for use or approved
15 for emergency use by the United States Food and Drug
16 Administration to detect the presence of viral RNA. “Test” or
17 “testing” does not include serologic testing, also known as antibody
18 testing. “Test” or “testing” may include any other viral culture test
19 approved for use or approved for emergency use by the United
20 States Food and Drug Administration to detect the presence of
21 viral RNA which has the same or higher sensitivity and specificity
22 as the PCR Test.

23 (3) An “employee’s place of employment” does not include an
24 employee’s home or residence.

25 (j) This section shall remain in effect only until January 1, 2023,
26 and as of that date is repealed.

35 SEC. 4. Section 3212.88 is added to the Labor Code, to read:

36 3212.88. (a) This section applies to employees who are not
37 described in Section 3212.87, who test positive during an outbreak

PROPOSED AMENDMENTS

Page 9 38 at the employee’s specific place of employment, and whose
39 employer has five or more employees.

Page 10 1 (b) The term “injury,” as used in this division, includes illness
2 or death resulting from COVID-19 if all of the following
3 circumstances apply:

4 (1) The employee tests positive for COVID-19 within 14 days
5 after a day that the employee performed labor or services at the
6 employee’s place of employment at the employer’s direction.

7 (2) The day referenced in paragraph (1) on which the employee
8 performed labor or services at the employee’s place of employment
9 at the employer’s direction was on or after July 6, 2020. The date
10 of injury shall be the last date the employee performed labor or
11 services at the employee’s place of employment at the employer’s
12 direction prior to the positive test.

13 ~~(3) The employee’s specific place of employment is, at the time
14 of the employee’s positive test, experiencing an outbreak.~~

+ (3) *The employee’s positive test occurred during a period of an
15 outbreak at the employee’s specific place of employment.*

16 (c) The compensation that is awarded for injury pursuant to this
+ section shall include full hospital, surgical, medical treatment,
17 disability indemnity, and death benefits, as provided by this
18 division.

19 (d) ~~(4) If an employee has paid sick leave benefits specifically~~
20 ~~available in response to COVID-19, those benefits shall be used~~
21 ~~and exhausted before any temporary disability benefits, benefits~~
22 ~~under Section 4800, 4800.5, or 4850 or Section 44977, 44984,~~
23 ~~45192, 45196, 87780, 87787, 88192, or 88196 of the Education~~
24 ~~Code are due and payable. If an employee does not have those sick~~
25 ~~leave benefits, the employee shall be provided temporary disability~~
26 ~~benefits or Section 4850 benefits, if applicable, from the date of~~
27 ~~disability. There shall not be a waiting period for temporary~~
28 ~~disability benefits.~~

29 ~~(2) To qualify for temporary disability benefits or benefits~~
30 ~~described in Section 4800, 4800.5, or 4850 or Section 44977,~~
31 ~~44984, 45192, 45196, 87780, 87787, 88192, or 88196 of the~~
32 ~~Education Code pursuant to this section, an employee shall have~~
33 ~~tested positive or be diagnosed with COVID-19 on or after July~~
34 ~~6, 2020.~~

35 (e) (1) An injury described in subdivision (b) is presumed to
36 arise out of and in the course of the employment, except as

Amendment 10

Amendment 11

Amendment 12

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Page 10 37 provided in this subdivision. This presumption is disputable and
38 may be controverted by other evidence. Unless controverted, the
39 appeals board is bound to find in accordance with the presumption.

Page 11 40 This presumption shall be extended to a person described in
1 subdivision (a) following termination of service for a period of 14
2 days, commencing with the last date actually worked in the
3 specified capacity at the employee’s place of employment. This
4 section does not affect an employee’s rights to compensation for
5 an injury or illness under this division in accordance with a
6 preponderance of evidence.

7 (2) Evidence relevant to controverting the presumption may
8 include, but is not limited to, evidence of measures in place to
9 reduce potential transmission of COVID-19 in the employee’s
10 place of employment and evidence of an employee’s
11 nonoccupational risks of COVID-19 infection.

12 (f) Notwithstanding Section 5402, if liability for a claim of a
13 COVID-19-related illness is not rejected within 45 days after the
14 date the claim form is filed pursuant to Section 5401, the illness
15 shall be presumed compensable. The presumption of this
16 subdivision is rebuttable only by evidence discovered subsequent
17 to the 45-day period.

18 (g) The Department of Industrial Relations shall waive the right
19 to collect any death benefit payment due pursuant to Section 4706.5
20 arising out of claims covered by this section.

21 (h) This section applies to all pending matters, unless otherwise
22 specified in this section, but is not a basis to rescind, alter, amend,
23 or reopen any final award of workers’ compensation benefits.

24 (i) When the employer knows or reasonably should know that
25 an employee has tested positive for COVID-19, the employer shall
26 report to their claims administrator in writing via electronic mail
27 or facsimile within three business days all of the following:

28 (1) An employee has tested positive. For purposes of this
29 reporting, the employer shall not provide any personally
30 identifiable information regarding the employee who tested positive
31 for COVID-19 unless the employee asserts the infection is work
32 related or has filed a claim form pursuant to Section 5401.

33 (2) The date that the employee tests positive, which is the date
34 the specimen was collected for testing.

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Page 11 35 (3) The specific address or addresses of the employee’s specific
36 place of ~~employment~~. *employment during the 14-day period*
+ *preceding the date of the employee’s positive test.*

Amendment 13

37 (4) The highest number of employees who reported to work at
38 the employee’s specific place of employment in the ~~preceding~~
39 ~~45-day period~~. *45-day period preceding the last day the employee*
+ *worked at each specific place of employment.*

Amendment 14

Page 12 1 (j) An employer or other person acting on behalf of an employer
2 who intentionally submits false or misleading information *or fails*
3 *to submit information* when reporting pursuant to subdivision (i)
4 is subject to a civil penalty in the amount of up to ten thousand
5 dollars (\$10,000) to be assessed by the Labor Commissioner.

Amendment 15

6 (1) If, upon inspection or investigation, the Labor Commissioner
7 determines that an employer or other person has intentionally
8 submitted false or misleading information in violation of
9 subdivision (i), the Labor Commissioner may issue a citation to
10 the person in violation. The citation may be served personally, in
11 the same manner as provided for service of a summons as described
12 in Chapter 4 (commencing with Section 413.10) of Title 5 of Part
13 2 of the Code of Civil Procedure, by certified mail with return
14 receipt requested, or by registered mail in accordance with
15 subdivision (c) of Section 11505 of the Government Code. Each
16 citation shall be in writing and shall describe the nature of the
17 violation, including reference to the statutory provision alleged to
18 have been violated.

19 (2) If a person desires to contest a citation or the proposed
20 assessment of a civil penalty therefor, they shall, within 15 business
21 days after service of the citation, notify the office of the Labor
22 Commissioner which appears on the citation of their request for
23 an informal hearing. The Labor Commissioner or their deputy or
24 agent shall, within 30 days, hold a hearing at the conclusion of
25 which the citation or proposed assessment of a civil penalty shall
26 be affirmed, modified, or dismissed. The decision of the Labor
27 Commissioner shall consist of a notice of findings, findings, and
28 order which shall be served on all parties to the hearing within 15
29 days after the hearing by regular first-class mail at the last known
30 address of the party on file with the Labor Commissioner. Service
31 shall be completed pursuant to Section 1013 of the Code of Civil
32 Procedure. Any amount found due by the Labor Commissioner as
33 a result of a hearing shall become due and payable 45 days after

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Page 12 34 notice of the findings and written findings and order have been
35 mailed to the party assessed. A writ of mandate may be taken from
36 this finding to the appropriate superior court, as long as the party
37 agrees to pay any judgment and costs ultimately rendered by the
38 court against the party for the assessment. The writ of mandate
39 shall be taken within 45 days of service of the notice of findings,
40 findings, and order thereon.

Page 13 1 (3) An employer or person to which a citation has been issued
2 shall, in lieu of contesting a citation pursuant to this section,
3 transmit to the office of the Labor Commissioner designated on
4 the citation the amount specified for the violation within 15
5 business days after issuance of the citation.

6 (4) If the party filing a writ of mandate is unsuccessful in
7 challenging the decision of the hearing officer, the Labor
8 Commissioner shall recover costs and attorney fees.

9 (k) (1) The claims administrator shall use information reported
10 pursuant to subdivision (i) to determine if an outbreak has occurred
11 for the purpose of administering a claim pursuant to this section.
12 To calculate the number of employees at a specific place of
13 employment, the claims administrator shall utilize the data reported
14 pursuant to subdivision (i) for the first employee who is part of
15 the outbreak. outbreak, or, for claims between July 6, 2020, and
+ the effective date of this section, the number reported under
+ paragraph (2).

+ (2) Any employer who is aware of an employee testing positive
+ on or after July 6, 2020, and prior to the effective date of this
+ section, shall report to their claims administrator, in writing via
+ electronic mail or facsimile, within 30 business days of the effective
+ date of this section, all of the data required in subdivision (i). For
+ the data required by paragraph (4) of subdivision (i), the employer
+ shall instead report the highest number of employees who reported
+ to work at each of the employee’s specific places of employment
+ on any given work day between July 6, 2020, and the effective date
+ of this section. The claims administrator shall use the information
+ reported under this paragraph to determine if an outbreak has
+ occurred from July 6, 2020, to the effective date of this section,
+ for the purpose of applying the presumption under this section.

+ (l) A claim is not part of an outbreak if it occurs during a
+ continuous 14-day period where the requisite number of positive
+ tests under paragraph (4) of subdivision (m) have not been met.

Amendment 16

Amendment 17

PROPOSED AMENDMENTS

+ For purposes of applying the presumption in this section, the claims
+ administrator shall continually evaluate each claim to determine
+ whether the requisite number of positive tests have occurred during
+ the surrounding 14-day periods.

Page 13

Amendment 18

16 (†)

+ (m) For purposes of this section:

17 (1) “COVID-19” means the 2019 novel coronavirus disease.

18 (2) Unless otherwise indicated, “test” or “testing” means a PCR
19 (Polymerase Chain Reaction) test approved for use or approved
20 for emergency use by the United States Food and Drug
21 Administration to detect the presence of viral RNA. “Test” or
22 “testing” does not include serologic testing, also known as antibody
23 testing. “Test” or “testing” may include any other viral culture test
24 approved for use or approved for emergency use by the United
25 States Food and Drug Administration to detect the presence of
26 viral RNA which has the same or higher sensitivity and specificity
27 as the PCR Test.

28 (3) (A) “A specific place of employment” means the building,
29 store, facility, or agricultural field where an employee performs
30 work at the employer’s direction. ~~It does not apply to buildings or
31 other locations of the employer that the employee did not enter.~~
32 “A specific place of employment” does not include the employee’s
33 home or residence, unless the employee provides home health care
34 services to another individual at the employee’s home or residence.

Amendment 19

Amendment 20

+ (B) In the case of an employee who performs work at the
+ employer’s direction in multiple places of employment within 14
+ days of the employee’s positive test, the employee’s positive test
+ shall be counted for the purpose of determining the existence of
+ an outbreak at each of those places of employment, and if an
+ outbreak exists at any one of those places of employment, that
+ shall be the employee’s “specific place of employment.”

Amendment 21

35 (4) An “outbreak” exists if within 14 calendar days one of the
36 following occurs at a specific place of employment:

37 (A) If the employer has 100 employees or fewer at a specific
38 place of employment, five 4 employees test positive for COVID-19.

Amendment 22

39 (B) If the employer has more than 100 employees at a specific
40 place of employment, 5 4 percent of the number of employees who
Page 14 1 reported to the specific place of employment, test positive for
2 COVID-19.

Amendment 23

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Amendment 24**

+ (C) A specific place of employment is ordered to close by a local
+ public health department, the State Department of Public Health,
+ the Division of Occupational Safety and Health, or a school
+ superintendent due to a risk of infection with COVID-19.

Page 14

3 ~~(m)~~

4 (n) This section shall remain in effect only until January 1, 2023,
+ and as of that date is repealed.

+ SEC. 5. This act is an urgency statute necessary for the
+ immediate preservation of the public peace, health, or safety within
+ the meaning of Article IV of the California Constitution and shall
+ go into immediate effect. The facts constituting the necessity are:

+ In light of the Governor’s declaration on March 4, 2020, of a
+ state of emergency due to the spread of COVID-19, and because
+ of the heightened risk of COVID-19 infection to frontline workers
+ and workers whose workplaces have suffered a COVID-19
+ outbreak, it is necessary that this act take effect immediately.

Amendment 25

Amendment 26

PROPOSED AMENDMENTS

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