

Date of Hearing: June 19, 2012

ASSEMBLY COMMITTEE ON HIGHER EDUCATION  
Marty Block, Chair  
SB 122 (Price) – As Amended: June 12, 2012

SENATE VOTE: 30-6

SUBJECT: Healing Arts.

SUMMARY: Authorizes the Board of Registered Nursing (BRN) to receive a fee from applicants and for renewal of a school of nursing's authorization, requires BRN to enter into a Memorandum of Understanding (MOU) with the Bureau for Private Postsecondary Education (Bureau) to delineate the powers of the Bureau related to consumer protection, as specified, and makes changes affecting the Medical Board of California and the Massage Therapy Council. Specifically, this bill:

- 1) Deletes provisions requiring a school of nursing that is not affiliated with an institution of higher education to make an agreement with such an institution for purposes of awarding nursing degrees and instead authorizes the BRN to grant approval to these institutions to grant nursing degrees.
- 2) Requires the BRN to have an MOU with the Bureau to:
  - a) Ensure that nursing schools approved by the BRN are not required to pay an additional application fee to the Bureau for the addition of a nursing school approved by the BRN.
  - b) Delineate the powers of the BRN to review and approve schools of nursing approved by the BRN, and,
  - c) Delineate the powers of the Bureau to protect the interest of students attending institutions governing by the Private Postsecondary Education (PPE) Act of 2009.
- 3) Subjects a school of nursing or a new nursing program seeking approval by the BRN to the following fee schedule:
  - a) A fee of \$5,000 for approval of a nursing program,
  - b) A fee of \$3,500 for continuing approval of a nursing program established after January 1, 2013, and,
  - c) A fee of \$500 for processing authorization of a substantive change to an approval of a school of nursing.
- 4) Authorizes the BRN to issue a cease and desist order to a school of nursing not approved by the BRN and requires the BRN to notify the Bureau and the Attorney General of such a school.
- 5) Requires meetings of the BRN to be held in northern and southern California.

The remaining provisions, which were recently amended into this bill, fall within the purview of the Assembly Business, Professions, and Consumer Protection Committee, to which this bill is double referred, and include the following:

- 1) Authorizes the Medical Board of California (Board) to issue a physician and surgeon license to an applicant who successfully completed a medical curriculum in a medical school that is not approved or recognized by the Board or that has been disapproved by the Board, if the applicant meets specified requirements, except that the applicant shall have held an unrestricted physician and surgeon license in another state or country for a minimum of five, rather than four, years.
- 2) Requires an applicant for a massage therapist certificate to successfully complete either (a) the 500 hours or the credit unit equivalent, as specified in existing law, or (b) the competency assessment examination, as specified in existing law, and curricula in massage and related subjects totaling a minimum of 250 hours, at a single approved school.
- 3) Requires the Massage Therapy Council (Council) to immediately suspend the certificate of a certificate holder upon receipt of clear and convincing evidence that the holder has committed an act punishable as a sexually related crime or felony and to consider any available credible mitigating evidence before making a decision to so suspend a certificate. Grants the holder of a certificate so suspended the right to a hearing to be held within 30 days, and requires the Council to send notice of suspension to the certificate holder and to other specified businesses.
- 4) Authorizes a law enforcement agency or local government agency with responsibility for regulating massage or massage business, upon request of the Council, to provide information to the Council concerning an applicant or certificate holder, including, but not limited to, information related to criminal activity or unprofessional conduct allegedly engaged in by that person.
- 5) Authorizes the Council to deny an application or discipline a certificate holder for a conviction of a felony, misdemeanor, infraction, or municipal code violation, or liability in an administrative or civil action, that is substantially related to the qualifications, functions, or duties of a certificate holder, and requires a certificate holder to provide identifying information, upon request, as specified.

EXISTING LAW as it pertains to the education-related provisions of this bill:

- 1) Establishes the Bureau within the Department of Consumer Affairs and provides for Bureau oversight and regulation of California private postsecondary institutions pursuant to the PPE Act of 2009, including a school of nursing that is not accredited by accrediting agencies affiliated with the Western Association of Schools and Colleges or regional accrediting agencies recognized by the United States Department of Education. (Education Code § 94800 et seq.)
- 2) Establishes numerous unfair business practices for institutions covered by the PPE Act, including prohibiting an institution from promising employment or otherwise overstating the

availability of jobs or making untrue or misleading statements regarding student completion, placement or expected salary rates. (EC § 94897)

- 3) Sets forth certain disclosure requirements pertaining to completion, placement, licensure, and earning potential. (EC § 94928)
- 4) Authorizes the Bureau to accept the approval provided by another state or federal government agency for the addition of a program of study at a Bureau-approved institution with no further review by the Bureau. (EC § 94892)

FISCAL EFFECT: The Senate Appropriations Committee determined the following costs to the BRN Fund for nursing school oversight:

- 1) Investigations: \$50,000 in 2012-13 and \$100,000 annually thereafter.
- 2) Cease and desist actions: \$100,000-\$200,000 or more in any year.
- 3) Revenue: \$120,000-\$160,000 annually.

COMMENTS: This bill is double referred to the Assembly Business, Professions, and Consumer Protection Committee, where the issues pertaining the California Medical Board and Massage Therapy Council are appropriately considered. The provisions of this bill that fall within the Higher Education Committee's jurisdiction affect the approval of nursing schools and the oversight roles of the Bureau, which are the focus of this analysis.

Background. The BRN is responsible for regulating the practice of registered nurses in California, including implementation and enforcement of the laws and regulations related to nursing education, licensure, practice and discipline. In March 2011, the Senate Business, Professions, and Economic Development Committee held a sunset review hearing of the BRN, which resulted in recommendations for improving numerous BRN functions, including its nursing school approval process, in order to decrease the time for approval and increase the number of for-profit nursing schools.

Need for this bill. According to information provided by the author, the average length of time for initial BRN approval of a nursing school application is 18 months, but there have been instances when the process has taken four to five years, especially if the applicant is a for-profit institution. With over 41,500 qualified applicants in 2009-10 and the ability of both public and private programs to admit only about 14,200 applicants in 2009-10, the BRN must find ways to improve its approval process so that private for-profit schools have an equal chance of meeting the requirements to provide nursing programs.

BRN sunset review recommendations. The BRN is responsible for ensuring that applicants to operate a nursing school program are in compliance with statutory and regulatory requirements. The sunset review report recommended the BRN explore any opportunity to streamline their current nursing program approval process, including providing staff training to more consistently apply rules and regulations to new programs, authorizing BRN to charge a fee to cover its costs for approving new schools, having the BRN assume student protection provisions currently required under the PPE Act, and removing the involvement of the Bureau in approving nursing

schools.

The role of the Bureau and its fee. The Bureau is generally responsible for protecting consumers and students against fraud, misrepresentation, or other business practices at private postsecondary institutions that may lead to loss of students' tuition and related educational funds; establishing and enforcing minimum standards for ethical business practices and the health and safety and fiscal integrity of postsecondary education institutions; and establishing and enforcing minimum standards for instructional quality and institutional stability for all students in all types of private postsecondary educational and vocational institutions.

Under existing law, if a Bureau-approved institution is granted approval to offer a program by the relevant licensing board (such as the BRN), the Bureau may simply incorporate that approval into the institution's approval to operate from the Bureau after it has received documentation signifying the approval by the relevant agency. The Bureau does not charge an application fee in these cases. However, the institution would include any income from the students enrolled in these programs when calculating their annual fees owed to the Bureau. Thus, the provision of this bill that requires the Bureau to waive its fee for nursing school applicants under an MOU with the BRN is unnecessary, since the Bureau already has this authority and follows this practice.

Author's amendment. The author has agreed to accept the following amendment to remove language pertaining to the Bureau's authority to charge an application fee:

Page 7, line 30: ... the Bureau for Private Postsecondary Education ~~to ensure that institutions approved by the bureau are not required to pay an additional application fee to the bureau for the addition of a school of nursing approved by the board, and~~ to delineate the powers of ...

Prior legislation. SB 538 (Price) of 2011, granted the BRN authority to be the only agency responsible for approving schools of nursing and to receive an appropriate fee from applicants; however, provisions related to the Bureau's ability to charge a fee were removed. The bill was vetoed for reasons unrelated to these provisions.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

California School Nurses Organization

##### Opposition

None on file.

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