

Date of Hearing: January 14, 2020

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1469 (Low) – As Amended September 13, 2019

SUBJECT: Court reporters: registration: nonshorthand reporting corporation entities.

SUMMARY: Creates a regulatory framework for out-of-state firms to provide shorthand reporting services within California by registering with the Court Reporters Board of California (CRB) and designating a CRB-certified reporter-in-charge with responsibility for ensuring compliance with California law.

EXISTING LAW:

- 1) Establishes the CRB within the Department of Consumer Affairs. (Business and Professions Code (BPC) § 8000)
- 2) Provides the CRB with responsibility for determining the qualifications of persons applying for certificates, making rules for the examination of applicants and the issuing of certificates, granting certificates to applicants who are qualified in professional shorthand reporting, adopting rules and regulations which are reasonably necessary to carry out the provisions of the state's court reporting laws. (BPC § 8007)
- 3) Defines the practice of shorthand reporting as the making, by means of written symbols or abbreviations in shorthand or machine shorthand writing, of a verbatim record of any oral court proceeding, deposition, court ordered hearing or arbitration, or proceeding before any grand jury, referee, or court commissioner and the accurate transcription thereof. (BPC § 8017)
- 4) Reserves use of the title "certified shorthand reporter" for natural persons holding a valid certificate as a shorthand reporter. (BPC § 8018)
- 5) Sets forth various requirements for applicants to become certified as a shorthand reporter, including the necessary training and examination. (BPC §§ 8020 – 8027.5)
- 6) Defines a shorthand reporting corporation as a corporation which is authorized to render professional services, as long as that corporation and all of its shareholders, officers, directors, and employees rendering professional services who are certified shorthand reporters are in compliance with California law. (BPC § 8040)
- 7) Requires each director, shareholder, and officer of a shorthand reporting corporation to be a certified shorthand reporter. (BPC § 8044)
- 8) Prohibits a shorthand reporting corporation from engaging in unprofessional conduct under any statute, rule or regulation pertaining to shorthand reporters or shorthand reporting and holds shorthand reporting corporations to the same standards as individual persons holding a shorthand reporting certificate. (BPC § 8046)
- 9) Authorizes the CRB to formulate and enforce rules and regulations to carry out the provisions of state law relating to shorthand reporting corporations. (BPC § 8047)

- 10) States that it is the intent of the Legislature to enhance the regulation of licensed shorthand reporters and shorthand reporting corporations by imposing specific penalties that seek to discourage practices that are inconsistent with the integrity and impartiality required of officers of the court and to promote competition based upon the quality and price of shorthand reporting services. (BPC § 8050(a))
- 11) Establishes specific prohibitions and penalties for individuals or entities who are not certified shorthand reporters or shorthand reporting corporations, and who do any of the following:
 - a) Any act that constitutes shorthand reporting within California.
 - b) Employs, independently contracts with, or recruits a licensed shorthand reporter to report or transcribe deposition testimony in a court proceeding or in a deposition.
 - c) Contracts with a resident of California by mail or otherwise that requires either party to perform licensed shorthand reporting within California.
 - d) Independently contracts with or is employed by an entity that does any of the previously described acts.(BPC § 8050(b))
- 12) Specifically prohibits individuals or entities who are not certified shorthand reporters or shorthand reporting corporations from doing any of the following:
 - a) Seek compensation for a transcript that is in violation of the minimum transcript format standards or applies fees other than those set out in set forth in California law.
 - b) Make a transcript available to one party in advance of other parties or offer or provide a service to only one party.
 - c) Fail to promptly notify a party of a request for preparation of all or any part of a transcript, excerpts, or expedites for one party without the other parties' knowledge.(BPC § 8050(d))
- 13) Subjects individuals or entities who violate the above prohibitions to a \$10,000 civil fine per violation. (BPC § 8050(f))
- 14) Authorizes the Attorney General, a district attorney, a city attorney, or the CRB to bring a civil action for a violation of the above prohibitions. (BPC § 8050(g))

THIS BILL:

- 1) Allows for an entity that is not a California-certified shorthand reporter or shorthand reporting corporation to engage in shorthand reporting services if it complies with a newly established registration program with the CRB.
- 2) Requires entities seeking registration to pay an annual registration fee to the CRB, not exceeding \$500, to cover the costs of administering the registration program.

- 3) Requires the entity to designate a CRB-certified reporter-in-charge who is a full-time employee of the registered entity, a resident of California, and holds a currently valid California license at all times as a certified shorthand reporter where the certificate holder has no restrictions on their license and is not subject to a pending board accusation or investigation at the time of the entity's application for registration.
- 4) Holds the designated reporter-in-charge responsible to the CRB for their entity's compliance with all state laws and regulations pertaining to and within the scope of the practice of certified shorthand reporting and any acts of the entity pertaining to and within the scope of the practice of a certificate holder shall be deemed acts of the reporter-in-charge.
- 5) Requires an entity seeking registration with the CRB to provide all the following information as part of their application:
 - a) The name and certificate number of the entity's certified reporter-in-charge.
 - b) Whether the entity, its owners, or its employees have been subject to any enforcement action, relating to the provision of court reporting services, by a state or federal agency within five years before submitting the initial registration.
 - c) Whether the entity, within five years before submitting the registration, has settled, or been adjudged to have liability for, a civil complaint alleging the entity or the entity's reporter-in-charge engaged in misconduct relating to the provision of court reporting services for more than fifty thousand dollars.
 - d) Any additional documentation the CRB reasonably deems necessary for consideration in the initial registration process.
- 6) Requires the CRB to issue a decision on an entity's application within 90 days of receiving the completed application.
- 7) Requires a registered entity to notify the CRB within 30 days if the entity's reporter-in-charge will no longer be representing the entity, and requires that the entity propose a new reporter-in-charge to take over responsibility for the entity.
- 8) Requires the CRB to revoke an entity's registration if the entity does either of the following:
 - a) Engages, in whole or in part, through officers, employees, or independent contractors that are not certificate holders, in acts that are within the scope of practice of a certificate holder, unless otherwise permitted by law.
 - b) Directs or authorizes the reporter-in-charge to violate state laws or regulations pertaining to shorthand reporting or offering financial incentives to the reporter-in-charge for engaging in acts that violate state law.
- 9) Authorizes the CRB to revoke, suspend, deny, restrict, or discipline an entity's registration as the board deems fit for violations of the laws or regulations pertaining to shorthand reporting by the entity's officers, employees, or independent contractors, including the issuance of citations and fines.

- 10) Requires the CRB to consider suspending the registration of an entity for a minimum of one year if the license of its reporter-in-charge is suspended or revoked for violating the law more than twice in a consecutive five-year period.
- 11) Provides entities with the right to reasonable notice and opportunity to comment to and before the board regarding any determination to deny or revoke registration before that determination becomes final, and allows entities to seek review of a CRB decision to deny or revoke registration under this section either in an administrative hearing.
- 12) Prohibits a certificate holder from engaging in the practice of shorthand reporting on behalf of an entity that the reporter knows or should know is not registered with the board, and requires the certificate holder to verify whether a person or entity is registered with the board before engaging in the practice of shorthand reporting on behalf of that person or entity.
- 13) Directs the CRB to create and make available on its internet website a directory of registered entities, and prohibits the CRB from taking action against a certificate holder solely for a performing services for an unregistered firm if the certificate holder reasonably relied on the CRB's directory stating that the entity was registered at the time.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the author, who is Chair of the Assembly Committee on Business and Professions. The language in this bill was previously proposed for inclusion in AB 1520 (Low, Chapter 463, Statutes of 2019), the CRB's most recent sunset review vehicle. Those provisions were instead placed into this bill to accommodate greater discussions on the topic.

Background.

Overview of the CRB. Court reporters are professionals who stenographically preserve the words spoken in a wide variety of official legal settings such as court hearings, trials, and other pretrial litigation-related proceedings, namely depositions. Court reporters work in courtrooms as official reporters or in the private sector as freelance reporters who provide deposition services. Court reporters are officers of the court and their competence, impartiality, and professionalism must be beyond question. A complete and accurate transcript of the proceedings made by an impartial third party is the cornerstone for all appeal rights. These transcripts, which include testimony given under oath, are relied upon by the consumer as an accurate source of information.

The CRB was established in 1951 by the Legislature to protect consumers from incompetent practitioners. The CRB carries out its mission by testing, licensing, and disciplining court reporters who use the title Certified Shorthand Reporter (CSR), and by recognizing the schools of court reporting that meet state curriculum standards. By statute, the use of the acronym CSR is restricted to those individuals who have a Board-issued license. In California, a person must be licensed to work as a court reporter in state courts (official reporter) or to act as a deposition officer (freelance reporter). Freelance reporters provide services as individual contractors and/or through court reporting firms. In fiscal year 2017-18, there were 7,661 licensed CSRs in California, of which 5,886 CSRs are active and in good standing.

Shorthand Reporting Corporations. BPC § 8044 specifies that each director, shareholder, and officer of a shorthand reporting corporation must be a licensed shorthand reporter. Business models for shorthand reporting corporations and other service providers vary throughout the state and country. While there are a number of licensee-owned corporations in California, there are a number of businesses that provide litigation services but are not currently under the jurisdiction of the CRB. The CRB does not register or certify corporations in California. BPC § 8044 and 8046 provide the CRB with authority over licensee-owned shorthand reporting corporations incorporated in California. However, the CRB currently has limited jurisdiction over corporations which have no license to discipline. Therefore, the CRB may have difficulty pursuing non-licensee owned corporations that it suspects may be offering or arranging for court reporting services through employment or independent contractors yet violating ethical codes of conduct that shorthand reporting corporations would have to follow. In addition, this bill would explicitly prohibit a licensee from providing shorthand reporting services for a person or entity that has not registered with the CRB.

The issue of shorthand reporting corporations was raised during the CRB's 2015 sunset review. At that time, it was noted in the Committee's staff background paper that there was a substantial deal of unlicensed activity relating to foreign corporations who are offering court reporting services in California without authorization. In response to complaints about unethical gift-giving and violations of the minimum transcript format standards, a task force was appointed by the CRB in 2007, to study the issue of firm oversight. The members of the task force included small, medium, and large-firm owners.

Ultimately, the task force determined that a legislative fix was necessary to address this issue, which began several years of attempted legislation to provide for some meaningful oversight of unlicensed out-of-state firms by the CRB. This began with AB 1461 (Ruskin) of 2009. That bill sought to clarify that in addition to corporations, a firm, partnership, sole proprietorship, or other business entity providing or arranging for shorthand reporting services (any entity offering or providing the services of a shorthand reporter) was barred from doing or failing to do any act that constitutes unprofessional conduct under any statute, rule or regulation pertaining to shorthand reporters or shorthand reporting. That bill died in the Assembly Appropriations Committee.

In 2015, SB 270 (Mendoza) was introduced. This bill would have provided the CRB with broad powers of enforcement over foreign or domestic corporations that offer or arrange for shorthand reporting services, as specified, in California, and clarified that the provisions of the bill do not regulate the setting of negotiated transcript fees and reasonable fees for non-contracting parties. That bill was held in the Assembly Committee on Business and Professions. A subsequent bill, AB 1660 (Kalra), was introduced in 2017. AB 1660 would have provided for registration of "court reporter providers" by the CRB if certain conditions were met; this bill was vetoed by the Governor.

Ultimately, AB 2084 (Kalra, Chapter 648, Statutes of 2018) was enacted to authorize the Attorney General, a city attorney, a district attorney or the CRB to bring a \$10,000 civil action against any person or entity who engages in four specified business practices over the course of providing, or contracting to provide, shorthand reporting services. This bill did not bring any new entities under the direct oversight of the CRB. However, it was intended to enhance the state's ability to hold out-of-state reporting firms that engaged in misconduct accountable by providing a clear avenue for litigation.

Litigation History. In 2010, the CRB received a complaint that U.S. Legal, a Texas-based corporation, was violating gift-giving provisions under 16 CCR § 22475(b)(8). After investigation, the CRB issued a citation and fine, but U.S. Legal denied the CRB's jurisdiction to issue it the citation. In April of 2011, the CRB brought suit against U.S. Legal for declaratory relief (*Court Reporters Board v. U.S. Legal*). After a hearing, the Court ruled in an unpublished opinion that, even if U.S. Legal was rendering court reporting services in California and was in violation of gift-giving regulations, the CRB is not authorized to impose citations or fines against U.S. Legal because U.S. Legal was not a "professional corporation" but instead a "foreign professional corporation," as defined under the Corporations Code. Corporations Code § 13401(c) provides that, "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the BPC for the performance of professional services by a foreign professional corporation."

In his veto of AB 1660 (Kalra), Governor Brown alluded to "matters that are currently under review by an appellate court" and stated a preference for waiting for the outcome of litigation prior to deciding on the bill. This message is understood to be in reference to *Moose v. U.S. Legal*, a case similar to the CRB's litigation involving a private attorney general suit brought under California's Unfair Competition Law. Ultimately, this litigation resulted in a ruling for the plaintiff, but it was subsequently determined that the plaintiff did not have standing to sue, resulting in no greater clarity of how out-of-state firms may be regulated within California.

Because the appellate court found for the plaintiff and the court's decision was "unpublished", the decision did not establish precedent finding that out-of-state corporations that arrange shorthand reporting services are subject to the jurisdiction of the Board. However, the appellate court's ruling does indicate that, under a different set of facts, the court would make that ruling.

Currently Proposed Firm Registration Program. During the CRB's 2019 sunset review, the committee background paper analyzed the out-of-state firm issue and concluded: "Given the recent court ruling, the Committees may wish to consider whether it would be appropriate to revisit the issue of requiring out-of-state firms to register with the Board if they are engaged in arranging for shorthand reporting services." Provisions were then placed into the CRB's sunset bill, AB 1520 (Low, Chapter 463, Statutes of 2019) to provide for a firm registration program. That language was eventually removed from that bill and amended instead into this one for final consideration by the Legislature.

The firm registration program proposed in this bill shares many similarities to those previously introduced. The program would give the CRB clear statutory oversight over firms outside of California, and ensure that a representative of each firm is at all times fully accountable to the CRB as a certificate holder. This is accomplished through a newly considered concept referred to as the "reporter-in-charge" mechanism.

Modeled after the Board of Pharmacy's successful "pharmacist-in-charge" statutes, this bill would require every out-of-state firm seeking to provide services within California to designate one professional who holds a certificate issued by the CRB as responsible for ensuring compliance with California law. This would enable the CRB to utilize its existing administrative infrastructure to regulate firms that would otherwise be considered outside the CRB's jurisdiction. While not every employee of the firm would need a certificate, at least one accountable representative of the firm would be entirely subject to existing CRB regulation.

In addition to requiring the designation of a reporter-in-charge, this bill would provide for a comprehensive review and approval process with which firms seeking registration would have to comply. The CRB would receive information about any potential concerns regarding the firm, its owners, and its employees, and would be able to deny an application if it considers there to be a substantiated threat to the public. This application process would be funded by a registration fee of up to \$500.

Finally, this bill would explicitly state that every registered firm, through its reporter-in-charge, would be responsible for complying with all laws and regulations relating to shorthand reporting in California. The bill also empowers the CRB to pursue a broad spectrum of disciplinary remedies against a firm as well as its reporter-in-charge, ensuring full accountability. Firms registrations be revoked, suspended, denied, restricted, or subjected to other disciplinary action as the board deems fit for violations of the law.

If enacted, this bill would conclude a prolonged history of legislation and litigation relating to out-of-state firms. The intent of the bill is to establish meaningful oversight of these firms by the CRB without either requiring universal licensure of all firm employees or the granting of a certificate to the firm corporation itself. The result would be a clear pathway for out-of-state firms to lawfully provide shorthand reporting services within California while preserving the state's protections of consumers and the integrity of the judicial process.

Prior Related Legislation. AB 1520 (Low, Chapter 463, Statutes of 2019) extends the CRB's sunset date by four years until January 1, 2024 and enacted numerous changes to the law governing shorthand reporting.

AB 2084 (Kala, Chapter 648, Statutes of 2018) authorizes the Attorney General, a city attorney, a district attorney or the CRB to bring a \$10,000 civil action against any person or entity who engages in four specified business practices over the course of providing, or contracting to provide, shorthand reporting services.

AB 1660 (Kala) of 2017 would have authorized an individual or entity to engage in the business of providing or arranging for court reporting services if specified conditions are met, including if an individual or entity is registered with the CRB and places certain prohibitions on engaging in the practice of court reporting with an individual or entity that is not registered with the CRB. *This bill was vetoed by the Governor.*

SB 270 (Mendoza) of 2015 would have provided the CRB with broad powers of enforcement, as specified, over foreign or domestic corporations that offer or arrange for shorthand reporting services, as specified, in California, and clarified that the provisions of the bill do not regulate the setting of negotiated transcript fees and reasonable fees for non-contracting parties. *This bill was held in the Assembly Committee on Business and Professions.*

ARGUMENTS IN SUPPORT:

The **Court Reporters Board (CRB)** supports this bill. The CRB argues that "firm registration is an uncomplicated, smart solution for all businesses who are providing court reporting services, as well as a vetted standard by many other large states." The CRB states that "AB 1469 expressly states, without doubt or confusion, that the Board regulates all providers of court reporting services and all will be held to the same laws and regulations as intended by the Legislature."

The **Deposition Reporters Association of California** (CalDRA) also supports the bill. CalDRA argues that “the bill is needed because out-of-state companies not owned or run by licensees but which nevertheless are closely regulated as providers of court reporting services in their home states.” According to CalDRA, “AB 1469 would be the first bill in the nation to require pre-screening of unlicensed corporations before they are permitted to do business here.” CalDRA believes that “further litigation under current law is not the answer.”

The **California Court Reporters Association** (CCRA) is also in support of the bill. CCRA writes that it “supports this bill because it ensures consistent regulation between shorthand and nonshorthand reporting corporations. This bill also ensures that nonshorthand reporting corporations are properly scrutinized by the CRB during registration and protects individual reporters. CCRA strives to ensure the integrity of the reporting process and ensure that all applicable laws are followed, a goal that should be shared by the industry as a whole.”

ARGUMENTS IN OPPOSITION:

None on file.

POLICY ISSUE(S) FOR CONSIDERATION:

While this bill would provide great resolution to the outstanding issue of how the state should regulate out-of-state reporting firms, it does not presently deal with another unresolved issue regarding whether the CRB should issue licenses to reporters who utilize voice writing technology. The author should consider working with stakeholders to address that issue as well as the bill moves forward in the process.

REGISTERED SUPPORT:

California Court Reporters Association
California Deposition Reporters Association
Court Reporters Board of California

REGISTERED OPPOSITION:

None on file.

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