

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1533 (Committee on Business and Professions) – As Amended April 19, 2021

Policy Committee: Business and Professions

Vote: 18 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

**SUMMARY:**

This bill extends the sunset date for the Board of Pharmacy (the Board) and implements a number of changes in response to issues raised during the Board's sunset review oversight process. Provisions with fiscal impacts include the following:

- 1) Extends the sunset date for the Board, from January 1, 2022 to January 1, 2026.
- 2) Requires the Board to employ its own legal counsel.
- 3) Requires pharmacists who prescribes a Schedule II controlled substance to have completed an education course on the risks of addiction associated with the use of Schedule II drugs.
- 4) Requires the Board to convene a workgroup of interested stakeholders to discuss whether moving to a standard of care enforcement model would be feasible and appropriate for the regulation of pharmacy and make recommendations to the Legislature.
- 5) Authorizes the Board to bring an action for specified civil penalties for repeated violations of the Pharmacy Law by pharmacies operating under common ownership or management.
- 6) Authorizes the Board to bring an action against a pharmacy for civil penalties for violations of the Pharmacy Law demonstrated to be the result of a policy or which was otherwise encouraged by a common owner or manager.

**FISCAL EFFECT:**

- 1) \$120,000 for additional administrative staff to convene a workgroup, update forms and applications to reflect changes in various licensing programs and to develop educational materials and regulations, should the Board determine regulations are necessary (Pharmacy Board Contingent Fund).
- 2) This bill requires the Board to hire its own counsel. The Board's counsel would likely replace the services or augment the legal services the Board currently receives through the Department of Consumer Affairs. The Board anticipates that this may require some level of additional support staff, imposing additional administrative cost of an unknown amount that may be offset by reduced cost for centralized legal services.
- 3) Minor and absorbable costs for the creation of new enforcement codes in the Board's information technology system.

- 4) Unknown, potentially significant, enforcement costs and penalty revenue, depending on violations and the Board's use of its enforcement discretion.

#### COMMENTS:

- 1) **Purpose.** This bill is the sunset review vehicle for the California State Board of Pharmacy, authored by the Assembly Business and Professions Committee. The bill extends the sunset date for the Board and enacts technical changes, statutory improvements and policy reforms in response to issues raised during the Board's sunset review oversight process.
- 2) **Background.** This bill contains a large number of individual provisions with corresponding background that has been addressed in the Business and Professions Committee Sunset Review process background paper and hearing, as well as in policy analysis of this bill.

One issue of significant stakeholder interest is this bill's expansion of the Board's authority to impose civil penalties for widespread violations across multiple pharmacies. The Pharmacy Law currently holds each pharmacy and its pharmacist-in-charge responsible for operations at the individual site, even if that pharmacy is part of a larger chain. However, in many cases, the Board explains, administrative or disciplinary action at an individual store may be the result of policies set at a corporate level. Currently, the Board's remediation and sanctions against an individual pharmacy is arguably inadequate to address a system wide issue across a large multi-store chain. Because the Board is limited to citing each pharmacy individually, the Board believes current law makes it difficult to enforce against violations resulting from corporate policy.

This bill would authorize the Board to bring an action for civil penalties for repeated violations of any of the Pharmacy Law by one or more pharmacies operating under common ownership or management. It would also authorize the Board to bring an action against a pharmacy operating under common ownership or management for civil penalties not to exceed \$1 million dollars for any violation of this chapter demonstrated to be the result of a policy or which was otherwise encouraged by the common owner or manager.

- 3) **Support.** United Food and Commercial Workers Western States Council (UFCW) and other labor organizations write that they support this bill, especially the "long over-due increase in fines available to the Board of Pharmacy to motivate compliance with current law from some of the world's largest publicly-traded corporations." UFCW argues the maximum fine available to the Board now is embarrassing, standing at a level less than half the ceiling for small claims court or \$5,000.
- 4) **Oppose Unless Amended.** California Retailers Association (CRA) opposes this bill unless amended. The CRA writes retailers are supportive of extending the sunset of the Board, as well as the Board's mission to protect patient safety. CRA states it appreciates the Board's enforcement authority, including its authority to cite and fine pharmacies for pharmacy law violations. CRA believes the current penalties are meaningful deterrents for violations.