



April 28, 2011

SB 544 (Price) – OPPOSE

The Honorable Senator Curren Price
Chair, Senate Business, Professions, and Economic Development Committee
State Capitol, Room 2053
Sacramento, CA 95814

Dear Senator Price:

On behalf of CalSmallBiz, representing small businesses which comprise California's economic backbone, I write in respectful opposition to your SB 544. As you are aware, this well-intended measure seeks to, among other things, align state boards and investigatory agencies with respect to their efforts to investigate and prosecute misconduct by both licensees and unlicensed entities.

SB 544 has numerous flaws which are addressed below, and are reasonably expected to cause years of litigation, additional and unnecessary costs to the state in a time when every tax dollar is needed to continue public services, and last but not least violate the due process and other constitutional rights of Californians including employment rights, privacy and due process, not to mention possible conflicts with HIPAA protections as well as conflicting standards of evidence.

Bad for small businesses

Small businesses drive our economy, and according to a comprehensive study and subsequent report released by the Kauffman Foundation, the future of economic development hinges upon fostering favorable small business conditions while reducing undue government interference.

At first blush, the alignments within SB 544 may seem like a good idea. However, a one-size approach does not fit all as the motives and conduct of at least one significant state board – the Veterinarian Medical Board (VMB) – is being called into question for its abusive and anti-small business tactics. While I recognize it is not the intent of SB 544 to be a 'tool' for any board or entity to abuse its discretion under color of authority, SB 544 will result in the unintended consequence of being (ab)used by the VMB to crush small businesses, including those in your district, as a result of the board's patently self-serving agenda.

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The actions of the Veterinary Medical Board need to be audited and publicly scrutinized. Evidence exists to show the VMB has violated the Bagley-Keene Open Meetings Act, Public Records Act (PRA), slandered private businesses and their owner(s) with untrue claims, and engaged in smear campaigns whereby executive officers have made personal phone calls to businesses to inappropriately influence the nature of business relationships which are outside the scope, authority, and purview of the board.

SB 544 will effectively give boards like the VMB massive fines capability to effectively wield a \$100,000 baseball bat to beat-up small businesses. In its present form, SB 544 creates a \$100,000 fine structure for the enforcement of “unlicensed” activities against mom and pop retailers. In addition to other problems, it is the board that gets to decide what is and is not unlicensed activity; and that target continues to move as evidenced by currently pending regulatory changes by the VMB.

In response to greed motivated requests by its veterinarian members, the VMB is presently using its authority to unduly influence the free market by shifting business away from retailers through an attempt to re-classify cosmetic teeth cleaning into an activity which is exclusively permitted by the VMB’s licensed members.

In reports to the Board, such as “The Secret To Attracting A Flood of Dental Patients to Your Veterinary Practice,” by Steve Maughan and Dean Biggs, the VMB is well aware that “the most profitable services you can provide in your veterinary practice is dentistry” and cosmetic teeth cleaning. Increased profits for its members results in increased operating budgets by the VMB.

While more than 10,000 of these cosmetic teeth cleanings are safely performed annually in private retail settings throughout California –at a cost to consumers that is 1/6th that of in a veterinarian’s office – the VMB has launched abusive attacks against these retailers. Despite its best efforts, the VMB has utterly failed to identify a statistically significant number of viable claims against any retailers which later withstand even a rudimentary level of judicial scrutiny.

Unfettered Access to Records

Whether narrowly interpreted and applied, or used as a fishing expedition, SB 544 would open the door for any state agency which deems it necessary to require the surrender of private documents without a search warrant or even a modicum of protection for consumers’ and licensees’ privacy rights.

CalSmallBiz is concerned with SB 544’s proposed requirements for state agencies, state and local governments, law enforcement agencies, health care facilities, and employers to turn over records pertaining to licensees, including contractually confidential and medical records.

As we have seen with other instances of abuse, precedence has already been set by government agencies within California whereby entire computer and filing systems were seized, on mere fishing expeditions without charges being filed, and without any recourse for the business to continue operating without any records.

While we understand that the intent of these provisions aim to facilitate communications between agencies and create efficiencies in the investigatory process, these provisions appear to be overly broad, and raise significant privacy concerns regarding licensee medical and other confidential information being surrendered.

Reporting of charges

If a person is deemed to be innocent until proven guilty, then why would they be required to disclose mere charges to any board absent a conviction? CalSmallBiz has concerns with licensees being required to report charges to the board, particularly when there is not a subsequent conviction, and believe such a requirement may raise due process concerns.

Stigmatizing Licensees for alleged alcohol and unprofessional conduct

As an act of manifest injustice by positive law, SB 544 seeks to take an otherwise lawful personal civil liberty and vilify it as unprofessional conduct, thus stigmatizing licensees who elect to engage in lawful activities.

As an unintended consequence, when licensees are stigmatized through the provisions of SB 544, we believe the standard of evidence for state agencies would be raised from “some evidence” or “preponderance of evidence”, to “beyond a reasonable doubt” and thereby make it more difficult for state agencies to secure a conviction or sustain legitimate complaints.

Language in SB 544 that would qualify “use” of alcohol as unprofessional conduct causes concern over how this provision would be justly implemented. For example, a person could be accused of unprofessional conduct for drinking alcohol, even if there is no harm done to another person or any crime alleged. This provision seems overly broad, and again raises issues of fairness and due process.

Restricted or limited licenses

The bill would authorize boards to issue “limited” or “restricted” licenses to practitioners with mental or physical illnesses the board asserts may affect their competency, which is foreseeable may violate the Americans with Disabilities Act (ADA) or California Fair Employment and Housing Act.

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Various similarly licensed professionals affected by SB 544 have widely disparate functions. For example, some licensees sit at desks processing case reviews, provide telephone advice services, or perform other tasks that a physical disability may not at all inhibit. Given this, it is unclear how or why the board would implement a "limited" or "restricted" license for such professionals.

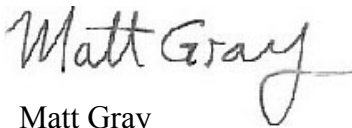
Internet disclosures

The requirements of SB 544 for boards to post adverse actions (i.e. felony convictions, malpractice judgments, or arbitration awards) on its website, are overbroad. This provision seems overly broad in that it would require the posting of such adverse actions even if the action had no direct bearing upon the licensee's scope of practice or related responsibilities.

In these cases, the necessity of such postings comes into questions, as it seems the purpose is more punitive than public safety oriented, as the bill purports to promote. Further, in these instances, the punitive action may be viewed as stigmatization and thereby raise the standard of evidence as discussed previously.

CalSmallBiz offers candid communications on legislative matters with small businesses and business interest groups throughout California. For the reasons outlined above, the advancement of SB 544 in its current form would be detrimental to the well-being of California small businesses, and therefore California's economy. Thank you for your consideration of our input on this legislation. If you have questions, please feel free to contact me at 916-444-5551.

Sincerely,

A handwritten signature in cursive script that reads "Matt Gray". The signature is written in black ink and is positioned above the printed name.

Matt Gray

cc: Members, Senate Business, Professions, and Economic Development Committee