

**SENATE COMMITTEE ON BUSINESS, PROFESSIONS  
AND ECONOMIC DEVELOPMENT  
Senator Curren D. Price, Jr., Chair**

Bill No: SB 706      Author: Price  
As Amended: April 25, 2011      Fiscal: Yes

**SUBJECT:** Business and Professions.

**SUMMARY:** Makes numerous enforcement enhancements to the Department of Real Estate (DRE) and the Office of Real Estate Appraisers (OREA); transfers OREA into DRE; requires DRE to appoint a Real Estate Advisory Commission; requires licensing boards to post information about licensees on the Internet, as specified; makes updating and conforming changes.

**Existing law:**

- 1) Provides for the licensure, and regulation of more than 483,000 real estate brokers, real estate salespersons, and more than 22,000 mortgage loan originator license endorsements by the Department of Real Estate (DRE) in the Business, Transportation and Housing Agency (BT&H). The Real Estate Commissioner (Commissioner), who serves as the chief executive of the Department, is appointed by the Governor, subject to Senate confirmation. The Commissioner is mandated to enforce the Real Estate Law. (Business and Professions Code (BPC) commencing with Section 10000).
- 2) Provides for the licensure and regulation of more than 13,800 real estate appraisers, and the certification of more than 200 appraisal management companies (AMCs) by the Office of Real Estate Appraisers (OREA) within BT&H. The Director of OREA (Director) serves as the chief executive of OREA, and is appointed by the Governor, subject to Senate confirmation. The Director is mandated to enforce the Real Estate Appraisers Licensing and Certification Law. (BPC commencing with Section 11300)
- 3) Requires specified boards within the Department of Consumer Affairs (DCA) to disclose on the Internet information on their respective licensees, including information on the status of every license, suspensions and revocations of licenses issued and other related enforcement actions. (BPC § 27)

**This bill:**

- 1) Transfers OREA to DRE, provides that OREA is under the supervision and control of the Commissioner; provides that the Director of OREA shall serve at the pleasure of the Governor and administer the Real Estate Appraisers Licensing and Certification Law, in consultation with the Governor and the Commissioner.

- 2) Requires firewalls to be maintained between DRE and OREA, to insulate the appraisal regulatory function from the real estate regulatory function, and to ensure that decisions related to appraisal license issuance, revocation, and disciplinary actions are made by the Director of OREA and not by the Real Estate Commissioner.
- 3) States that protection of the public shall be the highest priority for DRE and OREA in exercising their licensing, regulatory, and disciplinary functions and that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.
- 4) Allows DRE and OREA to enter into a settlement with a licensee or applicant instead of the issuance of an accusation or statement of issues against that licensee or applicant. Requires the settlement to identify the factual basis for the action being taken and the statutes or regulations violated. Specifies that a person who enters a settlement is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement. States that any settlement executed against a licensee shall be considered discipline, and a public record to be posted on the Internet Website.
- 5) Authorizes an administrative law judge to order a licensee in a disciplinary proceeding to pay, upon request of the Commissioner or Director, the reasonable costs of investigation and enforcement of the disciplinary case against the licensee (cost recovery).
- 6) When a licensee is placed on probation, authorizes the Commissioner or Director to, in addition to any other terms and conditions placed upon the licensee, require the licensee to pay the monetary costs associated with monitoring the licensee's probation.
- 7) Requires costs recovered pursuant to these disciplinary proceedings to be deposited in either the Real Estate Fund or the Real Estate Appraisers Regulation Fund, as specified, and makes the funds available upon appropriation by the Legislature.
- 8) Requires the automatic suspension of any licensee who is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. Requires the DRE or OREA to notify the licensee in writing of the suspension and of his or her right to elect to have the issue of penalty heard, as specified
- 9) Requires a licensee to submit a written report of any of the following to the DRE or OREA: The bringing of an indictment or information charging a felony against the licensee; arrest of the licensee; conviction of the licensee, including any felony or misdemeanor; and, any disciplinary action taken by another licensing entity or authority of this state or of another state. Requires the report to be made in writing within 30 days; and that failure to make a report is a public offense punishable by a fine not to exceed \$5,000 and shall constitute unprofessional conduct.
- 10) Requires a licensee to identify himself or herself as a licensee or registrant of the DRE or the OREA to law enforcement and the court upon an arrest or being charged with a crime. Requires DRE and OREA to inform licensees of this requirement.

- 11) Requires the clerk of the court to do the following:
  - a) Report to the DRE or OREA any judgment for a crime committed or for any judgment in excess of \$30,000, for which a licensee is responsible due to negligence, error or omission in practice, or rendering unauthorized professional services.
  - b) Transmit any felony preliminary hearing transcript concerning a defendant licensee of the DRE or OREA.
- 12) Requires the district attorney, city attorney, other prosecuting agency, or clerk of the court to notify the DRE or OREA if a licensee is charged with a felony immediately upon obtaining information that the defendant is a licensee of the DRE or OREA.
- 13) Requires the Commissioner to appoint a Real Estate Advisory Commission (REAC) comprised of 11 members, five of whom shall be real estate brokers licensed under this part and six of whom shall be public members. Two of licensed members shall hold a mortgage loan originator license endorsement; one public member shall be a consumer advocate and one public member shall be a local law enforcement representative.
  - a) Requires REAC to meet at least 4 times annually, subject to specified procedures.
  - b) Provides that the REAC shall consult with and advise the Commissioner on the DRE's policies and procedures.
  - c) Requires all REAC meetings to be open to the public and subject to the Bagley-Keen Open Meeting Act.
- 14) Requires the Secretary of BT&H, by January 31, 2012, to appoint a DRE Enforcement Program Monitor (Monitor), whose duties include:
  - a) Monitor and evaluate DRE's disciplinary system and procedures and report his or her findings, as specified, to the DRE and the Legislature no later than August 1, 2012 and every six months thereafter, as specified.
  - b) Make his or her reports available to the public and to the media.
- 15) Sunsets the provisions relating to the Monitor on January 31, 2014.
- 16) Provides the following regarding posting information about licensees on the internet pursuant to BPC § 27:
  - a) Requires the posted information to include: suspensions, revocations, and other related enforcement action, including accusations filed pursuant to the Administrative Procedures Act.
  - b) Deletes certain healing arts boards within DCA from the requirements to post licensee information in the Internet

c) Additionally requires the following to post information on the Internet:

- i) The Board of Accountancy.
- ii) The Architects Board.
- iii) The State Athletic Commission.
- iv) The State Board of Barbering and Cosmetology.
- v) The State Board of Guide Dogs for the Blind.
- vi) The State Board of Chiropractic Examiners.
- vii) The Department of Real Estate.
- viii) The Office of Real Estate Appraisers.

**FISCAL EFFECT:** Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

**COMMENTS:**

1. **Purpose.** The Author is the Sponsor of this measure. According to the Author, this bill is necessary to make appropriate changes to DRE and effectively regulate real estate brokers, real estate salespersons, and mortgage loan originator license endorsements in California.

The Author additionally states that this bill is necessary to make essential changes to the OREA in order to appropriately license and regulate real estate appraisers in California, and to make other changes to the Real Estate Appraisers Licensing and Certification Law.

2. **Background.** Earlier this year, this Committee conducted oversight of the Department of Real Estate and the Office of Real Estate Appraisers. The Committee also conducted oversight hearings to review 9 boards under the Department of Consumer Affairs. They included the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the Dental Board of California, the State Athletic Commission, the Board of Accountancy, Professional Fiduciaries Bureau, the Contractors State License Board, the Board for Professional Engineers, Land Surveyors and Geologists, the California Architects Board, the Landscape Architects Technical Committee. The Committee began its review of these licensing agencies in March with three days of hearings. This bill, and the accompanying sunset bills, is intended to implement legislative changes as recommended in the Committee's Background Papers for several licensing boards reviewed by the Committee this year.
3. **Department of Real Estate (DRE).** The DRE is responsible for regulating the practice of real estate brokers and real estate salespersons in California. DRE currently licenses more than 483,000 persons in California, with over 20,800 new licenses issued each year, and more than 95,000 licenses renewed each year. Licensed salespersons (333,330) outnumber licensed brokers (149,920) at a ratio of more than two to one. The DRE licenses and

regulates real estate salespeople, brokers, and corporations. To implement mandates established by federal legislation (The Secure and Fair Enforcement Mortgage Licensing Act, called the SAFE Act), the California Legislature enacted SB 36 (Calderon, Chapter 160, Statutes of 2009), which requires that beginning, January 1, 2011, real estate licensees who wish to act as mortgage loan originators must apply to DRE and obtain a mortgage loan originator (MLO) license endorsement. The Department issued over 22,000 MLO license endorsements prior to the January 1, 2011 deadline.

The Commissioner serves as the chief executive of the DRE and is appointed by the Governor, subject to confirmation by the Senate Committee on Rules. The Commissioner is mandated to enforce the Real Estate Law in a manner which achieves the maximum protection for the purchasers of real property and those persons dealing with real estate licensees.

DRE's Enforcement and Audit sections investigate complaints regarding alleged violations of the Real Estate Law, the Department's regulations, and other applicable laws. If a complaint is supported by evidence, the Commissioner may, after providing an opportunity for an administrative hearing, revoke, suspend, or deny a real estate license. The Commissioner may also issue desist and refrain orders to stop activities that are in violation of these laws.

This is the initial review of the Department of Real Estate by this Committee. The BP&ED Committee's jurisdiction includes oversight of the DRE.

- 4. Mortgage and Financial Crisis.** In the middle of the last decade, what started out as a nontraditional and subprime mortgage problem evolved into a global liquidity crisis and an economic downturn that some labeled the Great Recession, because of its severity. Major financial institutions failed; others merged or were acquired in last-ditch efforts to save themselves. The stock market went into free fall. California's unemployment rate climbed to more than 12%. Home equity became a vanishing commodity, eroding even more quickly than the retirement savings accounts of aging baby boomers. Consumer confidence fell to all-time lows. Notices of default and foreclosures grew to all-time highs.

In 2008, nearly a quarter million Californians lost their homes to foreclosure. Over 96% of those properties reverted to the lender. When it first began, the problem seemed limited to subprime borrowers with poorly underwritten and inadequately disclosed mortgage loans. Yet, as the problem grew and the economy continues to weaken, the effects of what was initially labeled "the subprime mortgage crisis" spread to borrowers among all walks of life and income levels, and to all types of loans. For some, the problem has been mortgage affordability. Either mortgage payments grew to levels that are no longer sustainable by borrowers, or borrowers' financial situations have declined to levels that can no longer accommodate an unchanged mortgage payment.

Affordability, however, was only a symptom of a growing problem. What once appeared to be solely an affordability problem increasingly became a negative equity problem. More borrowers left mortgages they could afford, because home values had fallen below the mortgage values, and the borrowers would rather walk away from a bad investment than spend years trying to rebuild home equity.

On the Federal level, in 2009 Congress created the Financial Crisis Inquiry Commission (FCIC) to examine the causes of the financial crisis and to report its findings to the Congress, the President, and the American people. Chaired by former State Treasurer Phil Angelides, the FCIC focused upon various factors of the financial meltdown including: fraudulent practices by mortgage lenders, reckless risk-taking by Wall Street banks and other financial institutions; the federal oversight of Fannie Mae and Freddie Mac, the entities that supported the secondary market for mortgages, and decades of government efforts to encourage homeownership.

The FCIC released its final report on the causes of the financial crisis on January 27, 2011, concluding that the financial crisis was an "avoidable" disaster caused by widespread failures in government regulation, corporate mismanagement and heedless risk-taking by Wall Street. The commission faulted shoddy mortgage lending and the excessive packaging and sale of loans to investors and risky securities backed by the loans.

In September 2010 the *Sacramento Bee* reported that foreclosure sales accounted for 43% of all property sales in California, the third-highest percentage among all states. In the second quarter of 2010, the April to June period, 62,492 California properties in some stage of foreclosure were sold.

Throughout the crisis, significant criticism has been focused upon real estate practices. Recent reports and articles have criticized the DRE for its lack of taking action against licensed real estate brokers and salespersons when necessary.

On November 12, 2010 the *Sacramento Bee* published the results of a study in which the newspaper found that of some 260 people charged with a real estate-related crime or sued by the state in recent years, at least 45 of those accused or convicted were still listed as licensed brokers or salespeople by the DRE, and consumers would have no way of knowing of the accusations. Another dozen had their real estate licenses suspended or revoked.

In July 2009, the Washington, DC based non-profit *Center for Public Integrity* published an investigation of the real estate appraisal industry in California and Florida that found that since 2005, one in six appraisers whose licenses were revoked or surrendered kept their real estate sales or broker's licenses. This allowed them to continue working in the real estate industry negotiating sales to homebuyers, who likely know little about their pasts.

Considering the problems that have existed within this industry and the current mortgage crisis, the DRE should be making a concerted effort to take any necessary action against their licensees who may have played a part in both the mortgage and lending crisis and who may have been involved in unethical activities or violated the law.

5. **This Bill Includes the Following Statutory Changes Related to the DRE Identified by this Committee during the March 2011 Oversight Hearings:**

- a. **Real Estate Advisory Commission (REAC).** Originally established in 1935, as an advisory body to the Commissioner, the REAC was repealed in 2005 through a Budget trailer bill (SB 64, Chapter 77, Statutes of 2005). The elimination stemmed from a recommendation of Governor Schwarzenegger's California Performance Review. A commission that consistently meets in a public capacity, subject to the notice

requirements of the open meeting laws, is a valuable forum for input from the public, including consumers and consumer interest groups, licensee discussions, and issues raised by public members of that commission. In addition, such a commission enhances the transparency of the overseeing regulatory agency, such as the DRE. An advisory body such as REAC could be an effective forum to better inform the DRE, the Administration and the Legislature on policy decisions which need to be made for welfare of consumers and the future of the real estate profession in California. This especially seems to be true in light of the complex issues that have arisen in the wake of the recent financial meltdown and home mortgage crisis. This bill establishes a Real Estate Advisory Commission under the DRE.

- b. **Protection of the Public.** Consumer protection is the essential purpose of all California's occupational licensing and regulatory agencies. However, in many instances statutory schemes do not establish clearly that protecting consumers is the agency's primary mission. The absence of a clear statutory mandate can lead to inconsistencies in agency policy over time and may also contribute to inaccurate judicial interpretations of the statutes. Even though DRE has responsibility to regulate the real estate profession, it is important to clarify that the highest priority of DRE is to protect the public. This bill establishes that protection of the public shall be the highest priority for the Department of Real Estate.
- c. **Enforcement Program Monitor.** Significant issues have risen in the last decade which have evolved into a global crisis and economic downturn. Home equity has eroded rapidly, and the focus of real estate activity shifted dramatically. Higher incidence of fraudulent activity and violations of the Real Estate Law have been documented by both DRE and by observers in federal and state governments by consumers and by the news media. Foreclosures account for nearly half of all property sales in California, and significant criticism has been focused upon real estate practices. Reports and articles have criticized the DRE for its lack of taking action against licensed real estate brokers and salespersons when necessary.

In recent years, when a significant question has arisen with the enforcement and regulatory activities of various regulatory boards within the Department of Consumer Affairs, this Committee has recommended the appointment of an enforcement monitor. Enforcement monitors have been appointed for the Contractors State License Board, the Medical Board of California, the Bureau of Automotive Repair, and the Bureau for Private Postsecondary and Vocational Education. The use of an enforcement monitor has been extremely effective in assisting a regulatory agency in improving the efficiency of its disciplinary and enforcement system. An enforcement monitor would be charged with investigating and evaluating the agency's discipline system and procedures, making its highest priority the reform and reengineering, as necessary, of the enforcement program and operations, including the agency's complaint, investigation, accusation, and settlement policies and practices. This bill requires the appointment of an enforcement program monitor for the DRE.

6. **Office of Real Estate Appraisers (OREA)** The OREA is responsible for regulating the practice of real estate appraisers in California, by ensuring that only qualified persons are licensed to conduct appraisals in federally related real estate loan transactions and that all real estate appraisers licensed by the state adhere to applicable laws, regulations, and

standards. Originally enacted in 1990, the OREA was established and charged with developing and implementing a real estate appraiser licensing program that complied with the federal mandate established by Congress in 1989 as a result of the savings and loan disaster of the late 1980's. That mandate, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act, requires states to license and certify real estate appraisers who appraise property for federally related transactions.

OREA currently licenses more than 13,800 licensed appraisers in California, with some 200 new licenses issued and 6,000 licenses renewed in FY 2009/2010. There are four levels of appraiser licensees: appraiser trainee (AT); appraiser licensee (AL); certified residential (AR); and certified general (AG). Levels of licensure are distinguished by increasing levels of education, experience, and scope of practice (property type, transaction value and supervision level). When a licensee wishes to move to up to a higher level of licensure, they must meet the qualifications and apply to "upgrade" the license to a higher license classification.

Beginning January 1, 2010, pursuant to SB 237 (Calderon, Chapter 173, Statutes of 2009), companies which operate as third-party brokers of appraisals between clients and appraisers must be registered and certified by OREA as appraisal management companies (AMCs). To date, OREA has issued approximately 200 certificates of registration to AMCs.

OREA is comprised of two core components, licensing and enforcement. The enforcement unit, operates under a federal mandate, and ensures adherence to the federally-required Uniform Standards of Professional Appraisal Practice (USPAP), California law and regulations. Both licensing and enforcement functions are required by the Appraisal Subcommittee (ASC), the federal government organization which oversees all state real estate appraiser licensing agencies.

The Director of the Office of Real Estate Appraisers (Director), who serves as the chief executive of the OREA, is appointed by the Governor, subject to confirmation by the Senate Committee on Rules. The Director is mandated to administer and enforce the Real Estate Appraisers Licensing and Certification Law.

This is the initial review of the Office of Real Estate Appraisers by this Committee. The BP&ED Committee's jurisdiction includes oversight of the OREA.

7. **Independence and Accuracy of the Appraisal Process.** Both California law and federal regulations (Federal Register Volume 73, No. 147, July 30, 2008, pp. 44522-44614 – Regulation Z, effective October 1, 2009; and SB 223, Machado, Chapter 291, Statutes of 2007) were enacted to help prevent the improper influence of appraisers, and to reduce the chances that appraisers would be pressured to "hit" certain target property values or return pre-determined, unsupported valuations when appraising real property.

The federal Home Valuation Code of Conduct (HVCC) became effective May 1, 2009. It is an agreement between Fannie Mae, Freddie Mac, the Federal Housing Finance Agency (FHFA), and New York State Attorney General Anthony Cuomo. The intent of the HVCC is to enhance the independence and accuracy of the appraisal process, and provide added protections for homebuyers, mortgage investors and the housing market. Any lender that sells a mortgage loan to Fannie Mae or Freddie Mac must adhere to the HVCC.

Due to the increased use of AMCs by lending institutions, a significant result of the HVCC agreement, the California Legislature enacted SB 237 (Calderon, Chapter 173, Statutes of 2009) requiring AMCs, as defined, to register with OREA, and subjects them to the provisions of the Real Estate Appraisers Licensing and Certification Law. Effective January 21, 2010, OREA adopted emergency regulations governing the implementation of the registration process.

The HVCC has no force and effect as of December 27, 2010, the effective date of the Federal Reserve Board's interim final regulations, implementing the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), signed into law on July 21, 2010. Fannie Mae and Freddie Mac adopted Appraiser Independence Requirements in October 2010 that replaced the HVCC. The requirements maintain the spirit and intent of the HVCC, and are intended to support the integrity of the appraisal process. The Dodd-Frank Act does not directly provide states with the authority to implement its requirements. Rather, state regulatory agencies, including OREA, must adopt and maintain effective laws, regulations and policies aimed at maintaining appraiser independence as consistent with the Act. The Dodd-Frank Act contains appraisal independence measures that are similar to those contained in HVCC and in SB 223 in 2007. In the current Legislative Session, SB 6 (Calderon) was introduced to update California's appraiser law to reflect changes made by the Dodd-Frank Act and the Federal Reserve Board's regulations.

There is some concern as to whether the OREA has been taking appropriate disciplinary action against appraisers when necessary. Considering the problems that have existed within this industry and the current mortgage crisis, the OREA should be making a concerted effort to take any necessary action against its licensees who may have played a part in both the mortgage and lending crisis and who may have been involved in unethical activities or violated the law.

8. **This Bill Includes the Following Statutory Changes Related to the OREA Identified by this Committee during the March 2011 Oversight Hearings:**

- a. **Transfer of OREA into DRE.** In 2009, AB 33 (Nava) proposed to consolidate the OREA with the DRE. The bill also proposed a number of other changes, including a complete reorganization of several Departments in BT&H. During the legislative process, the provisions of the bill unrelated to the consolidation of OREA and DRE became problematic and AB 33 was eventually changed to another subject. According to some familiar with the history of OREA's creation, California originally intended to create OREA as an independent division of DRE. Placement of the Appraisal Law in the Business and Professions Code, in code adjacent to the Real Estate Law, is one reflection of those original plans. However, a last-minute decision resulted in the creation of OREA as a separate body in 1990 when the Real Estate Appraisers Licensing and Certification Laws were enacted (AB 527, Chapter 491, Statutes of 1990). Periodic efforts have surfaced to merge OREA with other regulatory agencies including, SB 1866 (Figueroa) from 2002, a vetoed bill that would have folded OREA into the Department of Corporations; the Governor's 2005 California Performance Review, which recommended consolidating the OREA and the DRE into a Division of Real Estate Licensing.

OREA's Independence is a federal mandate, and any consolidation of OREA with DRE must maintain OREA's ability to issue and revoke licenses and act as the sole

administrative (non-judicial) arbiter of disciplinary actions involving appraiser licensees. This bill transfers OREA to DRE, and requires firewalls to be maintained between DRE and OREA, to insulate the appraisal regulatory function from the real estate regulatory function, and to ensure appraisal license and enforcement decisions are made by the Director of OREA and not by the Real Estate Commissioner.

- b. **Protection of the Public.** Consumer protection is the essential purpose of all occupational licensing and regulatory agencies. However, in many instances statutory schemes do not establish clearly that protecting consumers is the agency's primary mission. The absence of a clear statutory mandate can lead to inconsistencies in agency policy over time and may also contribute to inaccurate judicial interpretations of the statutes. Even though OREA has responsibility to regulate real estate appraisers profession, it is important to clarify that the highest priority of OREA is to protect the public. This bill establishes that protection of the public shall be the highest priority for the Office of Real Estate Appraisers.
9. **Enforcement Provisions Relating to Both DRE and OREA.** A number of the enforcement recommendations were made for both DRE and OREA due to concerns about the overall abilities to address enforcement issues in light of the current financial and mortgage crisis. The enforcement changes in this bill are an effort to give the DRE and OREA an array of enforcement tools that are available to other licensing agencies under this Committee's jurisdiction.
- a. **Stipulated settlements without filing an accusation.** The Administrative Procedures Act (APA) requires an agency to file an accusation or statement of issues against a licensee before the regulatory agency can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, it is the experience of a number of regulatory boards that there are instances in which a licensee is willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process in order to minimize the cost of an administrative hearing, or in order to expedite the resolution of a disciplinary matter. This bill authorizes DRE and OREA to enter into a stipulated settlement agreement with a licensee or applicant prior to the issuance of an accusation or statement of issues against the licensee.
  - b. **Cost Recovery.** The ability to recover the costs for the investigation and enforcement of a disciplinary case in which an administrative law judge has found a licensee to have committed violations of the licensing act is an important tool for licensing and regulatory agencies. This negatively impacts the industry by laying enforcement costs upon the backs of the entire licensing population rather than those that are being disciplined. This bill authorizes an administrative law judge to order a licensee in a disciplinary proceeding to pay, upon request of the Commissioner or Director, the reasonable costs of investigation and enforcement of the disciplinary case against the licensee.
  - c. **Probation Monitoring Costs.** Explicit statutory authority to recover the costs associated with probation monitoring for a disciplined licensee that has been placed upon probation is an important regulatory tool. A number of regulatory boards under the DCA have explicit statutory authority to recover costs for probation monitoring. Such statutory authority will give DRE and OREA greater explicit authority, lead to quicker resolution of

probation terms, and authorize DRE and OREA to refuse to renew the license of a licensee who has not paid probation costs. This bill authorizes the Commissioner or Director to require the licensee to pay the monetary costs associated with monitoring the licensee's probation.

- d. **Suspension Upon Incarceration.** A sharp criticism in the November 2010 *Sacramento Bee* articles was that a number of DRE licensees who had been convicted of crimes and incarcerated still held untarnished licenses with DRE. Giving DRE and OREA the ability to automatically suspend a licensee who is suspended will close this gap in DRE and OREA's enforcement arsenal, while maintaining a licensee's due process rights. This bill requires the automatic suspension of any licensee who is incarcerated after conviction of a felony, and requires DRE or OREA to give written notification to the licensee of the suspension and of his or her right to elect to a hearing on the penalty.
  - e. **Reporting of Indictment.** Applicants for original and renewal licenses are typically required to disclose criminal violations, prior disciplinary action taken against a professional license, or pending criminal charges. In such cases, a license will only be issued to the applicant after the receipt and review of the confirming information from the Department of Justice. This bill requires a licensee to submit a written report of any of the following to the DRE or OREA upon being indicted or charged with a felony; arrest or conviction, including any felony or misdemeanor; and, any disciplinary action taken by another licensing entity or authority of this state or of another state.
  - f. **Identification of Licensure Upon Arrest.** Requiring a licensee to inform law enforcement or the court that they are licensed by the DRE or OREA enhances the ability of the licensing agency to take appropriate enforcement action. This bill requires a licensee to identify himself or herself as a licensee or registrant of DRE or OREA to law enforcement and the court upon an arrest or being charged with a crime.
  - g. **Report by Court Clerk.** When a judgment is entered against a licensee, or when a licensee is charged with a felony, it is important for DRE or OREA to be notified so action can be taken against a licensee if the circumstances of the judgment or charge warrant disciplinary action. Similar provisions already apply to a number of regulatory boards under DCA. This bill requires the clerk of the court to report to DRE or OREA any judgment for a crime committed or for any judgment in excess of \$30,000, for which a licensee is responsible due to negligence, error or omission in practice, or rendering unauthorized professional services, and to transmit any felony preliminary hearing transcript concerning a defendant licensee of DRE or OREA.
10. **General Provisions – Internet Disclosures.** Currently, a number of regulatory boards are required to post the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the board or by the licensing program of another state.

For some time, this Committee has taken the position that not disclosing disciplinary actions is inconsistent with public protection. The Committee has further urged licensing boards and bureaus to publicly disclose accusations filed against licensees. An accusation is a public record under the Public Records Act (PRA). If a consumer made a PRA request to the DRE about a particular licensee, DRE would have to disclose any pending accusation. An

accusation means that the complaint has been fully investigated, the investigation is complete, and the prosecutor (DRE's enforcement deputy) believes that there is "clear and convincing evidence" of a violation that merits disciplinary action. An accusation is not a naked complaint. The filing of the accusation is what turns a confidential investigation into a matter of public record. There is no reason why DRE and OREA should not disclose accusations that are already public records. Once the investigation is completed, and accusations are filed, the public must be made aware of the charges against licensees.

This bill amends BPC § 27 to additionally include the following:

- a. Specify that disciplinary actions, including accusations under the Administrative Procedures Act must be disclosed on the Internet.
- b. Additionally requires the following boards to post information on the Internet:
  - The Board of Accountancy.
  - The Architects Board.
  - The State Athletic Commission.
  - The State Board of Barbering and Cosmetology.
  - The State Board of Guide Dogs for the Blind.
  - The State Board of Chiropractic Examiners.
- c. Includes DRE and OREA with those agencies that are required to post information on the internet about its licensees.

11. **Additional Enforcement Provisions To Be Considered.** There are several additional protections and enforcement provisions which were considered by the Committee during its Oversight Hearing of DRE and OREA and may be added to this measure as further discussions take place with DRE, OREA, consumer groups, industry and other interested parties. The Author is willing to bring this bill back to Committee if any of these provisions prove to be controversial. These items for further discussion and possibly inclusion in the bill are as follows:

- Examination development standards
- Mortgage loan originator license endorsement issues
- Reverse mortgages
- Contracting with collection service to collect outstanding fees
- Investigators with peace officer status
- Interim suspension authority under BPC § 494
- Suspension of licenses pursuant to Penal Code § 23
- Accepting complaints online
- DRE Recovery Account reforms
- Modification of OREA continuing education requirements

**SUPPORT AND OPPOSITION:**

Support: None received as of April 26, 2011

Opposition: None received as of April 26, 2011

Consultant: G. V. Ayers