

AMENDED IN SENATE APRIL 22, 2021

AMENDED IN SENATE APRIL 8, 2021

AMENDED IN SENATE MARCH 5, 2021

SENATE BILL

No. 241

Introduced by Senator Umberg

January 21, 2021

An act to amend Section 8050 of, and to add Section 8051 to, the Business and Professions Code, and to add Section 367.8 to the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 241, as amended, Umberg. Civil actions.

(1) Existing law provides for the licensure and regulation of shorthand reporters by the Court Reporters Board of California, which is within the Department of Consumer Affairs. Existing law subjects a person or entity to certain penalties if the person or entity engages in specified acts relating to shorthand reporting, including any act that constitutes shorthand reporting, except if the person or entity is a licensed shorthand reporter, a shorthand reporting corporation, or one of specified other persons or entities not subject to those provisions. Existing law makes a violation of these provisions a misdemeanor.

This bill, on and after July 1, 2022, would authorize an entity that is not a shorthand reporting corporation to engage in those specified acts if the entity is approved for registration by the board after meeting specified requirements, including paying an annual registration fee to the board in an amount not to exceed \$500 and designating a board-certified reporter-in-charge, as specified. The bill would require the board to approve an entity's registration or deny the entity's

application upon making specified findings. The bill would make a registration valid for one year and would also provide for the suspension and revocation of a registration by the board under specified circumstances. The bill would require the board to make available on its internet website a directory of registered entities. Because a violation of the provisions regulating shorthand reporting is a crime, by expanding the provisions to apply to these new registrants the bill would expand the scope of a crime and impose a state-mandated local program.

(2) Existing law authorizes a party in a civil case to appear by telephone at specified conferences, hearings, and proceedings, if the party has provided notice, unless the court determines that a personal appearance would materially assist in the determination of the proceeding or in the effective management or resolution of the particular case. Existing law requires the Judicial Council to adopt rules to effectuate these provisions.

This bill would authorize a witness in a proceeding, including a trial or an evidentiary hearing, to appear and give testimony by remote electronic means that provide a live audiovisual connection to the court, if the parties stipulate to this manner of appearance or one party requests it by motion. The bill would specify factors a court would be required to consider in determining whether to grant a motion. The bill would authorize the court to require the stipulating or moving parties to incur the costs of the remote appearance. *The bill would permit the court, if at any time during a witness's remote appearance the court determines a personal appearance is necessary, to continue the proceeding and require the witness to appear in person. The bill would impose additional requirements on a witness's remote appearance.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 8050 of the Business and Professions
- 2 Code is amended to read:

1 8050. (a) It is the intent of the Legislature to enhance the
2 regulation of licensed shorthand reporters and shorthand reporting
3 corporations pursuant to this section, by imposing specific penalties
4 in addition to other remedies permitted by this chapter that seek
5 to discourage practices that are inconsistent with the integrity and
6 impartiality required of officers of the court, to promote
7 competition based upon the quality and price of shorthand reporting
8 services, and to ensure consistent regulation of corporations owned
9 by certificate holders and those not owned by certificate holders.

10 (b) This section shall apply to an individual or entity that does
11 any of the following:

12 (1) Any act that constitutes shorthand reporting that occurs
13 wholly or partly in this state.

14 (2) Employs, independently contracts with, or recruits a licensed
15 shorthand reporter to report or transcribe deposition testimony in
16 a court proceeding or in a deposition.

17 (3) Contracts with a resident of this state by mail or otherwise
18 that requires either party to perform licensed shorthand reporting
19 wholly or partly in this state.

20 (4) Independently contracts with or is employed by an entity
21 that does any of the acts described in paragraphs (1) to (3),
22 inclusive.

23 (c) (1) This section does not apply to an individual, whether
24 acting as an individual or as an officer, director, or shareholder of
25 a shorthand reporting corporation, as defined in Section 8040, who
26 possesses a valid license, issued pursuant to Section 8018 or a
27 valid registration issued pursuant to Section 8051, that may be
28 revoked or suspended by the board, or to a shorthand reporting
29 corporation that is in compliance with Section 8044.

30 (2) This section does not apply to a court, a party to litigation,
31 an attorney of a party, or a full-time employee of a party or the
32 attorney of a party, who provides or contracts for certified
33 shorthand reporting for purposes related to the litigation.

34 (d) An individual or entity described in subdivision (b) shall
35 not do any of the following:

36 (1) Seek compensation for a transcript that is in violation of the
37 minimum transcript format standards set forth in Section 2473 of
38 Article 8 of Division 24 of Title 16 of the California Code of
39 Regulations.

(2) Seek compensation for a certified court transcript applying fees higher than those set out in Section 69950 of the Government Code.

(3) Make a transcript available to one party in advance of other parties, as described in subdivision (d) of Section 2025.510 of the Code of Civil Procedure, or offer or provide a service to only one party as described in subdivision (b) of Section 2025.320 of the Code of Civil Procedure.

(4) 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, as described in paragraph (5) of subdivision (b) of Section 2475 of Article 8 of Division 24 of Title 16 of the California Code of Regulations.

(e) Nothing in this section shall be construed to prohibit a licensed shorthand reporter, shorthand reporting corporation, or an individual or entity described in subdivision (b), from offering or providing long-term or multicase volume discounts or services ancillary to reporting and transcribing a deposition, arbitration, or judicial proceeding in contracts that are subject to laws related to shorthand reporting.

(f) An individual or entity that violates this section shall be subject to a civil fine not exceeding ten thousand dollars (\$10,000) per violation.

(g) The Attorney General, a district attorney, a city attorney, or the board may bring a civil action for a violation of this section, including an action for injunctive relief and any other appropriate relief, and shall be entitled, if they are the prevailing party, to recover reasonable attorney's fees.

SEC. 2. Section 8051 is added to the Business and Professions Code, to read:

8051. (a) On and after July 1, 2022, an entity that is not a shorthand reporting corporation may, wherever incorporated in the United States, engage in the conduct described in subdivision (b) of Section 8050 if it is approved for registration by the board after meeting all of the following requirements:

(1) The entity pays an annual registration fee to the board, in an amount determined by the board, not to exceed five hundred dollars (\$500). The fee shall not exceed the board's cost of administering this section.

1 (2) The entity has designated a board-certified reporter-in-charge
2 who is a full-time employee of the registered entity and a resident
3 of California, and who holds a currently valid California license
4 at all times as a certified shorthand reporter where the certificate
5 holder has no restrictions on their license and is not subject to a
6 pending board accusation or investigation at the time of the entity's
7 application for registration. The reporter-in-charge shall be
8 responsible to the board for an entity's compliance with all state
9 laws and regulations pertaining to and within the scope of the
10 practice of certified shorthand reporting and any acts of the entity
11 pertaining to and within the scope of the practice of a certificate
12 holder shall be deemed acts of the reporter-in-charge. Nothing in
13 this paragraph shall be construed as permitting the board to restrict,
14 suspend, or revoke the license of a reporter-in-charge for conduct
15 committed or directed by another person unless the
16 reporter-in-charge had knowledge of or knowingly participated in
17 such conduct.

18 (3) The entity agrees in the registration to abide by the laws,
19 regulations, and standards of practice applicable to businesses that
20 render shorthand reporting services pursuant to Section 13401 of
21 the Corporations Code, except for the requirements of Sections
22 8040 and 8044.

23 (b) An entity shall provide the board with all of the following
24 information for consideration of initial registration pursuant to
25 subdivision (a):

26 (1) The name and certificate number of the entity's certified
27 reporter-in-charge.

28 (2) Whether the entity, a controlling officer or parent corporation
29 of the entity, the entity's reporter-in-charge, or any of its officers,
30 employees, or independent contractors, has been subject to any
31 enforcement action, relating to the provision of court reporting
32 services, by a state or federal agency within five years before
33 submitting the initial registration. If so, the entity shall provide
34 the board a copy of the operative complaint with the initial
35 registration.

36 (3) Whether the entity, within five years before submitting the
37 registration, has settled, or been adjudged to have liability for, a
38 civil complaint alleging the entity or the entity's reporter-in-charge
39 engaged in misconduct relating to the provision of court reporting
40 services for more than fifty thousand dollars (\$50,000).

1 (4) Any additional documentation the board reasonably deems
2 necessary for consideration in the initial registration process.

3 (c) Within 90 days of receiving a completed application for
4 initial registration, including any disclosures made pursuant to
5 subdivision (b), the board shall either approve the entity's
6 registration or deny the application upon a finding that a substantial
7 risk would be posed to the public, which shall be subsequently
8 provided to the applicant in writing with specificity as to the basis
9 of that finding.

10 (d) A registration issued by the board pursuant to this section
11 shall be valid for one year, at which time it may be approved for
12 renewal by the board upon meeting the requirements of subdivision
13 (a).

14 (e) A registered entity shall notify the board in writing within
15 30 days of the date when a reporter-in-charge ceases to act as the
16 reporter-in-charge and propose another certificate holder to take
17 over as the reporter-in-charge. The proposed replacement
18 reporter-in-charge shall be subject to approval by the board. If
19 disapproved, the entity shall propose another replacement within
20 15 days of the date of disapproval and shall continue to name
21 proposed replacements until a reporter-in-charge is approved by
22 the board.

23 (f) The board shall revoke the registration of an entity if the
24 board determines the entity:

25 (1) Engaged, in whole or in part, through officers, employees,
26 or independent contractors that are not certificate holders, in acts
27 that are within the scope of practice of a certificate holder, unless
28 otherwise permitted by law.

29 (2) Directed or authorized the reporter-in-charge to violate state
30 laws or regulations pertaining to shorthand reporting or offering
31 financial incentives to the reporter-in-charge for engaging in acts
32 that violate state law.

33 (g) In addition to revoking an entity's registration as required
34 by subdivision (f), a registration issued under this section may be
35 revoked, suspended, denied, restricted, or subjected to other
36 disciplinary action as the board deems fit for violations of the laws
37 or regulations pertaining to shorthand reporting by the entity's
38 officers, employees, or independent contractors, including the
39 issuance of citations and fines.

1 (h) The board shall consider suspending the registration of an
2 entity for a minimum of one year if the license of its
3 reporter-in-charge is suspended or revoked for violating this section
4 more than twice in a consecutive five-year period.

5 (i) An entity shall have the right to reasonable notice and
6 opportunity to comment to and before the board regarding any
7 determination to deny or revoke registration before that
8 determination becomes final. An entity may seek review of a board
9 decision to deny or revoke registration under this section either in
10 an administrative hearing under Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code or through an action brought pursuant to Section 1085 of the
13 Code of Civil Procedure.

14 (j) A certificate holder shall not engage in the practice of
15 shorthand reporting on behalf of an entity that the reporter knows
16 or should know is not registered with the board and shall verify
17 whether a person or entity is registered with the board before
18 engaging in the practice of shorthand reporting on behalf of that
19 person or entity.

20 (k) The board shall create and make available on its internet
21 website a directory of registered entities. The board shall not take
22 action against a certificate holder solely for a violation of
23 subdivision (j) if the certificate holder reasonably relied on the
24 board's directory stating that the entity was registered at the time.

25 SEC. 3. Section 367.8 is added to the Code of Civil Procedure,
26 to read:

27 367.8. (a) Notwithstanding any other law, and subject to the
28 requirements of this section, the following may appear and give
29 testimony, including at a trial or an evidentiary hearing, by remote
30 electronic means that provide a live audiovisual connection to the
31 court:

32 (1) A witness for whom all of the parties to the action stipulate
33 to remotely appear. The court shall not deny or disapprove a
34 stipulation for a witness to remotely appear.

35 (2) A witness for whom a party files a motion requesting
36 permission to remotely appear.

37 (b) In ruling on a motion for permission to allow a witness to
38 remotely appear, the court shall consider the following factors:

1 (1) Whether the witness is critical or necessary for the
2 determination of the proceeding or the management or resolution
3 of the action.

4 (2) Whether allowing the witness to appear remotely would
5 materially prejudice one or more of the parties to the action.

6 (3) Whether the witness resides more than 100 miles from the
7 place of the proceeding.

8 (4) Whether the witness's circumstances would make it
9 impossible or difficult for the witness to appear in person, including
10 whether appearing in person would present risks to the witness's
11 health or safety.

12 (c) A witness remotely appearing and giving testimony pursuant
13 to this section shall take an oath under penalty of perjury,
14 administered by the court or a person authorized to take testimony
15 in the proceeding or action, as if the witness was appearing in
16 person.

17 (d) *Any part of a proceeding in which a witness appears*
18 *remotely shall be recorded, including by a court reporter if*
19 *applicable, to the same extent and in the same manner as if the*
20 *witness had appeared in person.*

21 (e) *The court shall ensure that the testimony of a witness*
22 *appearing remotely is audible to all other participants and court*
23 *staff, and that a witness appearing remotely is clearly visible on*
24 *the live audiovisual connection to the court.*

25 (f) *If, at any time during a witness's remote appearance, the*
26 *court determines that a personal appearance is necessary, the*
27 *court may continue the proceeding and require the witness to*
28 *appear and testify in person. The court may make this*
29 *determination on its own motion or on motion from any party to*
30 *the action.*

31 ~~(d)~~(g) If the court authorizes a witness to remotely appear
32 pursuant to this section, the court may order the party or parties
33 who requested or stipulated to the remote appearance to incur the
34 costs of the remote appearance.

35 ~~(e)~~

36 (h) This section does not prohibit or supersede a party's ability
37 to seek authorization to take a deposition pursuant to Section
38 2025.260.

39 SEC. 4. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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