



**Sunset Review and Evaluation of
California's Consumer
Regulatory Agencies**

Presented To

**Joint Legislative
Sunset Review Committee**

Senator Ruben S. Ayala, Chair



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The sunset and legislative review provisions of Ch 908/94 (SB 2036/McCorquodale) give the Legislature a good opportunity to review and analyze the effectiveness and need for consumer regulatory boards and commissions under the Department of Consumer Affairs. This review process should provide the Legislature the information it needs to eliminate those regulatory activities that are no longer needed and modify the remaining activities to improve their effectiveness and assure that they are addressing the Legislature's goals and objectives.

As you know, in this first year of review under Chapter 908, the Joint Legislative Sunset Review Committee will be assessing the need to continue or modify nine areas of regulatory activity as summarized in Figure 1. Another 22 regulatory activities will go through the same review process in future years.

Figure 1

Sunset Review and Evaluation of Initial Group of Consumer Boards

Inoperative July 1, 1997/Repealed January 1, 1998

- Board of Accountancy
- Athletic Commission
- Board of Barbering and Cosmetology
- Cemetery Board
- Court Reporters Board
- Board of Funeral Directors and Embalmers
- Board of Registration for Geologists and Geophysicists
- Board of Guide Dogs for the Blind
- Board of Landscape Architects



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In undertaking this review process, the Legislature will need to establish criteria upon which to assess the need to regulate, and the various regulatory agencies must demonstrate the need for and effectiveness of their regulatory activities, and we believe the Legislature should also change the current organizational structure of these regulatory programs. A brief discussion of these aspects of the review process follows.

Assessing the Need to Regulate

The state regulates occupations and professions to ensure that the interests of California's consumers are protected. A case could be made that all regulatory functions address such a basic mission. The degree of risk to the public, however, ranges from minimal to very high. For example, risk of significant harm to consumers from activities regulated by the Board of Landscape Architects is minimal, while activities regulated by the Medical Board of California are directly related to the public health and safety.

In determining whether or not to continue a regulatory function, the Legislature must decide on an acceptable degree of risk to the public. Activities within this level of risk would not be regulated by the state. To assist in making this decision, we suggest the Legislature use the basic premise that the mission of the state's regulatory process should be to *protect the public's health, safety, and welfare against serious harm*. Any regulatory function that does not meet this test should not be a state responsibility. An exception to this would be if the state is mandated by the federal government to regulate a certain activity.



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Using this premise, we recommend the Legislature use the following criteria to assess whether or not the state should continue to regulate a particular area:

- Will regulation protect the public from a potential health or safety risk that could result in death or serious injury?
- Will regulation protect the consumer from severe financial harm?
- Are there federal mandates that require the state to regulate certain activities?

The fact that certain areas do not meet these criteria certainly does not mean that the state has no role to play in those areas. Consumers would still have various protections provided through state laws (such as contract disclosure) and other remedies (such as through the judicial system). Moreover, consumers would still have information available on the competency of individuals providing services through various professional and nonprofit organizations.

Regulatory Programs Must Demonstrate Need and Effectiveness

Under the sunset review of these regulatory boards and activities, the Legislature needs to ensure that any regulatory function that is determined to be a state responsibility is addressing adequately the Legislature's goals and objectives regarding the particular activity. Furthermore, Chapter 908 specifies that:

... each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.



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To guide the committee in its review, Chapter 908 lists ten factors and minimum standards of performance upon which to base the need for the board or regulatory program. These can be placed into three categories (1) the need for the regulatory activity, (2) if needed, are changes appropriate, and (3) is the board effective.

To assist the Legislature in this sunset review process, the boards must provide sufficient details on at least the following:

- The specific public health, safety, and/or welfare hazards that the regulatory activity address.
- The process used to ensure competency of the licensee (for example, minimum education and experience requirements, requirements for continuing education, extent of initial testing, and continuing and periodic retesting).
- Frequency of on-site investigation and the results of these investigations.
- Types and seriousness of complaints filed and how complaints are placed in priority, processed, and resolved.
- Types of disciplinary actions initiated against violators and the outcome of these actions.

Consolidate Regulatory Programs Under the Director of the Department of Consumer Affairs

Finally, we believe that as the Legislature reviews the need for these regulatory programs, it should also change the current organizational structure.



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As you know, nearly all state regulatory programs, located on an organizational chart under the Department of Consumer Affairs, are under the statutory control of appointed representatives (typically board members). Each regulatory program has its own regulatory and administrative staff.

Fractionalized Organization Hinders an Effective and Responsive Process. We believe that the current organizational framework of independent regulatory programs does not give the state the ability to either provide effective consumer protection or sustain public confidence in the regulatory programs. The current framework creates these problems for several reasons including:

- ***Structure Does Not Facilitate the Needs of Business nor Promote Consumer Protection.*** Each program is administered independently by separate staff and management. This can hinder coordination of regulatory efforts among programs, result in uneven enforcement activities and records, and limit the effectiveness and efficiency of the overall regulatory program in terms of ability to protect consumers.
- ***Lack of Oversight and Control of Independent Boards.*** Because of the independent status of the boards, there is not an effective departmental oversight or control of board activities. Furthermore, many appointed board members are representatives and practitioners of the occupations and professions they license and regulate. These factors can leave the appearance—if not the reality—of a lack of state control and conflicts of interest, which in turn diminishes public confidence in the state's regulatory process.



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To mitigate these problems, the independent regulatory programs should be eliminated and the regulatory functions consolidated within the Department of Consumer Affairs under the control of the Director. The Director of the department could, if appropriate, establish advisory bodies comprised of representatives from regulated areas and consumer groups to assist in the department's licensing and regulatory activities. We believe that the resulting organization will be less restrictive on businesses, occupations, and professions and will provide better services to consumers.

Furthermore, consolidation of these entities would result in annual savings to special funds (fees charged to regulated businesses, occupations, and professions) from reducing the costs of administration and management overhead.