

Date of Hearing: June 30, 2015

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Ian Charles Calderon, Chair
SB 469 (Hill) – As Amended June 1, 2015

SENATE VOTE: 40-0

SUBJECT: State Athletic Commission.

SUMMARY: Would extend the operation of the California State Athletic Commission (Commission) until January 1, 2020, and makes changes to the laws governing the Commission's operations and the Commission's oversight of professional and amateur combat sports, as specified, held or given in California. Specifically, **this bill:**

- 1) Extends the operation of the Commission until January 1, 2020.
- 2) Codifies the Commission's authority to conduct drug testing necessary to promote the health and safety of licensees by providing that the administration or use of any drugs, alcohol or stimulants or injections in any part of the body or the use of any prohibited substance specified in the Prohibited List of the World Anti-Doping Code, as promulgated by the World Anti-Doping Agency, by a professional or amateur boxer or martial arts fighter licensed by the Commission, is prohibited.
- 3) Authorizes the Commission, in its discretion and through the rulemaking process, to determine the necessity of exemptions to the prohibition on prohibited substances for certain licensees.
- 4) Authorizes the Commission to conduct drug testing at any time during the period of licensure for a professional or amateur boxer or martial arts fighter licensed by the Commission.
- 5) Authorizes the Commission to assess a fine equal to 40% of the purse for a violation of the prohibited substances provisions outlined above.
- 6) Clarifies that a majority of the appointed members of the Committee on Medical and Safety Standards (MAC) constitute a quorum for the purposes of meeting.
- 7) Codifies the Commission's existing authority to recognize and enforce contracts between boxers and managers and between boxers and licensed clubs and extends those provisions to include martial arts fighters. Clarifies that all disputes between the parties to the contract, including the validity of the contract, shall be arbitrated by the Commission pursuant to the provisions of the contract. Authorizes the Commission to seek cost recovery related to arbitration proceedings.

EXISTING LAW:

- 1) Prohibits, under the Muhammad Ali Boxing Reform Act (Federal Boxing Act), events from taking place in a state without a regulatory commission unless the fight is regulated by either another state's commission or on sovereign tribal land. (Title 15 U.S.C. § 6303)

- 2) Provides, under the Federal Boxing Act, or State Athletic Commission Act (State Act), for the licensing and regulation of boxers, kickboxers, martial arts athletes and events held in California by the Commission within the Department of Consumer Affairs and makes the Commission inoperative and repealed on January 1, 2016. (Business and Professions Code (BPC) § 18600 et seq.)
- 3) Establishes, until January 1, 2016, the Commission, renders the Commission subject to review by the appropriate policy committees of the Legislature and authorizes the Commission to appoint a person exempt from civil service as Executive Officer (EO). (BPC §§ 18602 and 18613)
- 4) Provides the Commission with sole direction, management, control of, and jurisdiction over all professional and amateur boxing, professional and amateur kickboxing, all forms and combinations of forms of full contact martial arts contests, including mixed martial arts (MMA), and matches or exhibitions conducted, held, or given within this state. Provides that no event shall take place without the prior approval of the Commission and that no person shall engage in the promotion of, or participate in, a boxing or martial arts contest, match, or exhibition without a license, and except in accordance with the State Act. (BPC § 18640)
- 5) Establishes Commission oversight for contracts between boxers and managers and between boxers or managers and licensed clubs and requires the original contract entered into between managers and boxers and promoters and boxers to be placed on file with the Commission at the time it is approved. Provides that all disputes between the parties to the contract, including the validity of the contract, shall be arbitrated pursuant to the provisions of the contract. (Title 4 California Code of Regulations (CCR) §§ 220 and 230)
- 6) Establishes an Advisory Committee on Medical and Safety Standards (MAC) consisting of six licensed physicians appointed by the Commission which meets for the purpose of studying and recommending medical and safety standards for the conduct of boxing, wrestling, and martial arts contests. Requires a majority vote of the Commission to appoint a person to the MAC. (BPC § 18645)
- 7) Provides the Commission with enforcement authority to revoke or suspend licenses or a violation of the State Act. Authorizes the Commission to suspend temporarily, any license until final determination by the Commission when, in the EO's opinion, the action is necessary to protect the public welfare or is in the best interest of boxing or martial arts. Provides that a suspension may be without advance hearing, but the suspended licensee may apply to the Commission for a hearing on the matter to determine if the suspension should be modified or set aside. Requires an application for a hearing to be in writing and received by the Commission within 30 days after the date of suspension. Requires the Commission, upon receipt of such written request, to set the matter for hearing within 30 days. (BPC §§ 18841 and 18842)
- 8) Authorizes the Commission, EO or his or her duly authorized representative to assess fines, not to exceed \$2,500, for each violation of any of the provisions of the State Act or any of the rules and regulations of the Commission (contained within Title 4 CCR §200-829). States that the fine may be assessed without advance hearing, but the licensee may apply to

the Commission for a hearing on the matter if such fine should be modified or set aside in the manner outlined above. (BPC § 18843)

- 9) Provides that if a licensee fails to pay any fine assessed within 30 days after receipt of notice by the EO, after time for appeal has passed or after action on an appeal by the Commission, the Commission may, without hearing, revoke or suspend the license held by the licensee and authorize the Attorney General (AG) to bring an action in superior court to collect the amount due and attorney's fees. Provides that the action shall be speedily determined by the court and shall take precedence over all matters pending therein except criminal cases, applications for injunction, or other matters to which special precedence has been given by law. (BPC § 18844)
- 10) Provides that any person who otherwise violates any provision of the State Act is guilty of a misdemeanor. (BPC § 18878)
- 11) Provides that the administration or use of any drugs, alcohol, or stimulants, or injections in any part of the body, either before or during a match, to or by any boxer is prohibited. (Title 4 CCR § 303)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- Projected expenditures of approximately \$1.6 million annually (primarily from the Athletic Commission Fund), supporting 10.7 PY, until January 1, 2020, fully offset by annual fee revenues of approximately \$1.7 million.
- Costs of approximately \$115,000 in 2016-17 and \$107,000 annually ongoing for .5 PY of staff time and expenses related to additional drug tests. (Athletic Commission Fund)
- Estimated one-time costs of up to \$50,000 in 2015-16 to develop and adopt regulations providing for exceptions to drug testing requirements. (Athletic Commission Fund)
- Unknown increases in fine revenues for violations related to the use of prohibited substances. (Athletic Commission Fund)

COMMENTS:

- 1) *Author's statement of need for legislation.* According to the author, "SB 469 in particular is necessary to extend the sunset date of the Commission in order to ensure the protection, health, welfare and safety of the athletes and fighters licensed by the Commission who participate in sports and events the Commission oversees. Federal Law, the Muhammad Ali Boxing Reform Act prohibits events from taking place in a state without a regulatory commission unless the fight is regulated by either another state's commission or on sovereign tribal land. Regulated events result in higher levels of protection for fighters than unauthorized or illegal events, in addition to added revenue for the state and a boon to the local economy where events take place. While the Commission has faced some administrative and front office challenges in the past, the real work that they do, and do really well, is on the ground level at the events. From the medical walk-through to checking the ring or cage to ensuring the fighter immediately undergoes a medical exam to staff ensuring that a fighter gets paid on the spot; this is where the Commission excels and it is important

for regulation of events to continue to ensure the highest degree of safety for the many individuals participating in these sports."

2) *Background:*

- a) *Oversight Hearings and Sunset Review of Licensing Boards and Programs.* On March 18, 2015, the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee and Arts, Entertainment, Sports, Tourism and Internet Media Committee (Committees) conducted a joint oversight hearing to review the California State Athletic Commission, as part of our regulatory oversight authority.

This bill, as well as the 11 other regulatory agency sunset bills considered this session, is intended to implement legislative changes as recommended by staff of the Committees and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed by the Committees for this year.

- b) *California State Athletic Commission.* The Commission is responsible for protecting the health and safety of its licensees; boxers, kickboxers and martial arts athletes. Established by initiative in 1924, stemming from concerns for athletes' injuries and deaths, the Commission provides direction, management, control of and jurisdiction over professional and amateur boxing, professional and amateur kickboxing, all forms and combinations of full contact martial arts contests, including MMA and matches or exhibitions conducted, held or given in California. The Commission oversees licensing, prohibited substance testing, and event regulation. Functionally, the Commission consists of four components; licensing, enforcement, regulating events and administering the Pension Fund. In 2014, the Commission supervised 128 events. As of March 2015, the Commission has so far supervised 38 events, including 18 boxing, eight MMA, one kickboxing.

The current Commission mission statement, as stated in its Strategic Plan, is as follows, "The California State Athletic Commission is dedicated to the health, safety and welfare of participants in regulated competitive sporting events, through ethical and professional service." The Commission is responsible for implementation and enforcement of the Boxing Act and the State Act. The Commission establishes requirements for licensure, issues and renews licenses, approves and regulates events, assigns ringside officials, investigates complaints received, and enforces applicable laws by issuing fines and suspending or revoking licenses.

The Commission is comprised of seven members. Five members are appointed by the Governor and subject to confirmation by the California State Senate Committee on Rules confirmation. One member is appointed by the Senate Committee on Rules and one member is appointed by the California Speaker of the Assembly. Commissioners are part-time employees who receive a \$100-a-day per diem. There are no qualifications for an individual appointed to the Commission; however, no person currently licensed as a promoter, manager or judge may serve on the Commission. The law also specifies that efforts should be made to ensure at least four members have experience in either medicine as a licensed physician or surgeon specializing in neurology, neurosurgery,

head trauma or sports medicine, financial management, public safety, and the sports regulated by the Commission.

The Commission meets about six times per year to handle matters related to licensure and appeals of license denials, suspensions and fines; propose and review regulations or legislation focused on maintaining the health and safety of fighters; consider issues related to the Pension Fund and the Account; evaluate funding and revenue strategies, and; address a variety of topics brought forth by stakeholders.

According to information provided by the author, "The Commission has direct disciplinary authority to issue immediate suspensions and fines to ensure violations by Commission licensees are handled and reported quickly. The Commission also has the ability to issue cease and desist orders for unauthorized, illegal events in addition to the suspensions and license revocations for violations of the State Act and accompanying Commission regulations and rules. The Commission partners with the Office of the AG when license revocations, suspension or application denials are appealed. The Commission also conducts arbitrations for its licensees when disputes arise within either the boxer-manager or boxer-promoter agreements and has sole authority over these arbitration proceedings. The Commission's citation and fine option allows the Commission to penalize licensees rather than pursue formal discipline for less serious offenses, or offenses where probation or license revocation is not appropriate.

"The State Act creates the MAC consisting of six licensed physicians who are appointed by the Commission. This is the body the Commission looks to for guidance on key safety issues and meets to study, discuss and recommend standards for contests. This MAC rarely meets because of issues related to how many people constitute a quorum for purposes of an open meeting but should meet far more frequently, as these physicians typically know the landscape of the fighting world and can help the Commission better promote fighter health and safety. Particularly with all of the new studies and research documenting traumatic brain injury and technological advances to assess these injuries, it is important for the Commission to know what steps it may need to take to stay on top of licensee health based on the advice of the MAC.

"The Commission currently has one of the most thorough drug testing programs in the regulated combat sports landscape, but maintaining this important effort has high costs associated with it. The Commission's cite and fine ability allows for punishment to licensees for violations of the law that while significant, may not be serious enough to warrant license suspension. Fines are used as a penalty and are usually accompanied by a suspension or order to correct conduct. They are commonly issued against fighters for using prohibited substances and conduct that brings discredit to combative sports or the Commission. The Commission's current fines may not be deterring certain activity and may not be strong enough to make any kind of impact to professional fighters receiving high salaries. The Commission has also struggled to establish consistency in its citation and fine program, sometimes assigning small fines to certain fighters for some violations and large fines to others for similar violations. Some athletes receive over six figures to participate in bouts, and paying a \$2500 fine for use of an illegal substance does not make a dent in their earnings, thus potentially perpetuating use of the banned drugs without any noticeable penalty. Making it clear in the State Act, rather than just within the Commission's rules, that using prohibited substances on the World Anti-Doping

Agency's (WADA) prohibited list is also prohibited in California, while also increasing the amount the Commission may assess for a violation, serves to maintain the integrity of these bouts and protect the participants. When a fighter uses performance enhancing substances they can not only harm themselves but may also do more damage to an opponent than they otherwise would have and establishing deterrents to this practice assists the Commission in fulfilling its oversight responsibilities.

"The Commission is responsible for arbitration between licensees and managers or promoters when contract disputes arise. The Commission absorbs costs related to arbitration for contract disputes that it oversees that may impede its ability to maintain a healthy fund balance. The Commission utilizes the services of the AG to conduct arbitration proceedings and is then billed for these services at a rate that is not feasible for the Commission to pay on an ongoing basis, as the Commission has consistently exceeded its AG expenditure authority but at the same time has a statutory requirement to assist fighters through this process. This bill seeks to allow for cost recovery while ensuring that any payment for arbitration does not serve as a deterrent to licensees seeking arbitration by the Commission."

- 3) *Major provisions of proposed legislation.* The following are some of the major issues pertaining to the Commission along with background information concerning the particular issue. Recommendations were made by Committee staff regarding the particular issue areas which needed to be addressed and changes adopted are reflected below.

a) *Issue: Medical Advisory Committee Quorum*

Background: The State Act creates an Advisory Committee on Medical and Safety Standards (MAC) consisting of six licensed physicians who are appointed by the Commission. The Commission has been advised that in order for the MAC to receive a quorum, a majority of appointed members must be present, which means that four of the six members must attend meetings. According to the Commission, the MAC does not always even have six member appointees who would be eligible to attend these important meetings where guidance on key safety issues is discussed and recommendations are agreed upon to submit to the Commission as a whole. A quorum is required for governing bodies to meet and conduct official business or take official action such as voting on agenda items. It is unclear whether this important advisory committee can only meet if a quorum is achieved or if the committee, the meetings for which are noticed publicly, can meet with, for example, only a majority of the appointed members present.

Recommendation and Proposed Statutory Change: Committee staff recommended necessary changes to the State Act to clarify how, when, according to what requirements for public meetings and under what circumstances the MAC can meet.

This bill clarifies that a majority of the appointed members of the MAC constitute a quorum for the purposes of meeting.

- b) *Issue: Technical Changes May Improve the Effectiveness of the State Act and Commission Operations, Use of Performance Enhancing Substances and Drug Testing Costs.*

Background: The Commission currently has one of the most thorough drug testing programs in the regulated combat sports landscape, but maintaining this important effort has high costs associated with it. The Commission's cite and fine ability allows for punishment to licensees for violations of the law that while significant, may not be serious enough to warrant license suspension. Fines are used as a penalty and are usually accompanied by a suspension or order to correct conduct. They are commonly issued against fighters for using prohibited substances and conduct that brings discredit to combative sports or the Commission. The Commission's current fines may not be deterring certain activity and may not be strong enough to make any kind of impact to professional fighters receiving high salaries. The Commission has also struggled to establish consistency in its citation and fine program, sometimes assigning small fines to certain fighters for some violations and large fines to others for similar violations.

The Commission has explored seeking increased authority to collect fines so that it can more effectively discipline its licensees, specifically by basing the amount of a fine on a percentage of the fighter's purse. Some athletes receive over six figures to participate in bouts, and paying a \$2500 fine for use of an illegal substance does not make a dent in their earnings, thus potentially perpetuating use of the banned drugs without any noticeable penalty. The Commission reports that having this option will provide a greater level of deterrence for highly paid athletes. Other states like Nevada take between 3 and 40% of a fighter's purse for the event where the violation occurs.

Recommendation and Proposed Statutory Change: Committee staff recommended that the Committees authorize the Commission in statute to adjust its fine collection abilities so that it may collect a percentage of a fighter's purse for certain substance abuse violations and asked the Commission to advise the Committees of any statutory changes necessary to continue to keep California standards for banned substances on par with international agencies like WADA. Committee staff also recommended making technical changes to the State Act to clarify that athlete licensees are subject to drug testing throughout the period of their licensure, rather than only connected to an event (drug testing directly prior to or at an event) and recommended clarifying that blood and urine samples are both acceptable for drug testing.

This bill codifies the Commission's authority to conduct drug testing necessary to promote the health and safety of licensees by providing that the administration or use of any drugs, alcohol or stimulants or injections in any part of the body or the use of any prohibited substance specified in the Prohibited List of the World Anti-Doping Code, as promulgated by the World Anti-Doping Agency, by a professional or amateur boxer or martial arts fighter licensed by the Commission, is prohibited. The bill also authorizes the Commission, in its discretion and through the rulemaking process, to determine the necessity of exemptions to the prohibition on prohibited substances for certain licensees. This bill authorizes the Commission to conduct drug testing at any time during the period of licensure for a professional or amateur boxer or martial arts fighter licensed by the Commission and authorizes the Commission to collect blood and urine specimens from a professional or amateur boxer or martial arts fighter licensed by the Commission in order to detect the presence of any prohibited substances. The bill requires collection of specimens to be done in the presence of authorized Commission personnel. The bill also authorizes the Commission to assess a fine equal to 40% of the total purse for a violation of the prohibited substances provisions outlined above.

c) *Issue: Arbitration Cost Recovery*

Background: The Commission is responsible for arbitration between licensees and managers or promoters when contract disputes arise. The Commission absorbs costs related to arbitration for contract disputes that it oversees that may impede its ability to maintain a healthy fund balance. The Commission utilizes the services of the AG to conduct arbitration proceedings and is then billed for these services at a rate that is not feasible for the Commission to pay on an ongoing basis. The Commission has exceeded its AG expenditure authority yet has a statutory requirement to assist fighters through this process. The question was raised as to whether parties involved should absorb certain costs, ensuring that any payment for arbitration does not serve as a deterrent to licensees seeking arbitration.

Recommendation and Proposed Statutory Change: Committee staff recommended that the Commission be authorized to seek cost recovery for arbitration and requested that the Commission provide additional information about the instances under which it might collect reimbursement costs for arbitration and what the options may be for determining the costs paid by licensees (for example, a percentage of the disputed fees).

This bill codifies the Commission's existing authority to recognize and enforce contracts between boxers and managers and between boxers and licensed clubs and extends those provisions to include martial arts fighters. The bill also clarifies that all disputes between the parties to the contract, including the validity of the contract, shall be arbitrated by the Commission pursuant to the provisions of the contract and authorizes the Commission to seek cost recovery related to arbitration proceedings.

d) *Issue: Continuation of the Commission*

Background: California's professional and amateur boxers, kickboxers and mixed martial arts athletes are better served with appropriate oversight by a Commission, and the state benefits from holding these events in California. If the Commission goes away, large scale events held in communities throughout the state will not happen, taking with them the economic windfall to local businesses. Most significantly, fighting will still take place, in an underground, unregulated environment that is not conducive to protecting athletes and promoting career opportunities and abilities of many young people.

The most important work of the Commission happens on the ground level, managing and overseeing events and promoting the well-being of the competitors participating in combat sporting events in California. While the Commission has struggled with basic operational and administrative functions over the years, the current membership and management have shown a commitment to improve the Commission's overall efficiency and effectiveness and are working cooperatively with the Legislature and the Committees to bring about necessary changes.

Recommendation and Proposed Statutory Change: Committee staff recommended the Commission's operations and the State Act be extended for four years and be reviewed at that time by the respective Committees of the Senate and Assembly. Committee staff recommended that boxers, kickboxers and mixed martial arts athletes continue to be regulated by the current Commission members in order to protect the interests of athletes and the public and be reviewed once again in four years.

This bill extends the operations of the Commission until January 1, 2020.

- e) *Issue: Technical Cleanup. This bill includes cleanup provisions to clarify the State Act as recommended by the Commission and Committee staff.*
- 4) *Prior and related legislation.*
- a) SB 309 (Lieu), Chapter 370, Statutes of 2013, extended the operation of the California State Athletic Commission until 2016.
 - b) AB 1186 (Bonilla), Chapter 506, Statutes of 2013, clarified that the California State Athletic Commission is authorized to regulate all forms of full contact martial arts contests involving participants 18 years of age or younger, including all forms and combinations of forms of full contact martial arts contests deemed by the Commission to be similar, and that an amateur contest includes a contest where full contact is used, even if unintentionally.
 - c) AB 2100 (Alejo) of 2012, would have required that the Commission, in consultation with the Association of Boxing Commissions (ABC), to establish and enforce a professional code of conduct, as specified, and that persons seeking payment as promoters must make specified disclosures to the CSAC prior to being compensated. (Status: *The bill was held in the Assembly Committee on Appropriations.*)
 - d) SB 543 (Price), Chapter 448, Statutes of 2011, extended the Commission sunset date for 2 years, from January 1, 2012 to January 1, 2014.
 - e) SB 294 (Negrete McLeod), Chapter 695, Statutes of 2010, extended the Commission sunset date for one year, from January 1, 2011 to January 1, 2012.
 - f) SB 963 (Ridley-Thomas), Statutes of 2008, extended the Commission sunset date from July 1, 2009 to January 1, 2011.
 - g) SB 247 (Perata), Chapter 465, Statutes of 2006, reestablished the Commission on January 1, 2007, as an independent board through July 1, 2009.
- 5) *Double Referral: Should this bill pass out this committee, it will be re-referred to the Assembly Committee on Business and Professions.*

REGISTERED SUPPORT / OPPOSITION:

Support

There is no support on file.

Opposition

There is no opposition on file.

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