

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1813 (Medina)
Version: June 8, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

State Athletic Commission Act: officers and personnel

DIGEST

This bill provides that the Executive Officer (EO) of the State Athletic Commission (Commission) is protected from liability for discretionary decisions in the same manner as all other state employees are under existing law, including the approval of contests and the assignment of officials for contests, and provides that this clarification is declaratory of existing law. The bill also extends the sunset on provisions relating to the appointment of the EO and other officers and personnel of the Commission, until January 1, 2025.

EXECUTIVE SUMMARY

The State Athletic Commission is a state agency that oversees all professional and amateur boxing, kickboxing, and mixed martial arts competitions in California. The Commission licenses all competitors and match officials, approves matches to take place, and appoints the officials that referee and score the competitions. The EO is generally delegated authority over the Commission's duties. The EO is a state employee, and as such, should be provided immunity under existing law for discretionary decisions made in furtherance of the EO's official duties in the same manner as any other state employee. However, the State Athletic Commission, sponsor of the bill, claims there is an ambiguity under existing law that some have used to claim the EO is not afforded this immunity from liability. This bill seeks to address this issue by clarifying and reaffirming that the EO is entitled to the same protections as any other state employee.

The bill is sponsored by the State Athletic Commission. The bill is supported by the Association of Boxing Commissions and Combating Sports and the Ultimate Fighting Championship (UFC). There is no known opposition. The bill passed out of the Senate Business, Professions and Economic Development Committee on a vote of 12 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Boxing Act (Act) which provides for the licensure and regulation of combat sports by the Commission within the Department of Consumer Affairs (DCA). (Bus. & Prof. Code § 18600 et. seq.)
- 2) Specifies that the Commission has the 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, and matches or exhibitions conducted, held, or given within this state. (Bus. & Prof. Code § 118640.)
 - a) Prohibits an event from taking place without the prior approval of the Commission. (*Ibid.*)
 - b) Prohibits a person from promoting or participating in a boxing or martial arts contest, match, or exhibition without a license, and except in accordance with the Act. (Bus. & Prof. Code § 118640.)
 - c) Requires the commission to license referees, judges, matchmakers, and timekeepers, and may license assistant matchmakers and corporation treasurers, to participate in, or be employed in connection with, professional or amateur boxing contests, sparring matches, or exhibitions. (Bus. & Prof. Code § 18641.)
- 3) Requires the Commission to appoint an EO who exercises the powers and performs the duties delegated by the Commission and vested in the EO by the Act. (Bus. & Prof. Code § 18613(a).)
 - a) Authorizes the Commission to delegate to the EO the power to select and assign all referees. (4 C.C.R. Section 370.)
- 4) Provides that a public employee is not liable for an injury caused by their issuance, denial, suspension or revocation of, or by their failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization where they are authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked. (Gov. Code § Section 821.2.)
- 5) Provides that except as provided in statute, including the provisions of 10), a public employee is liable for injury caused by their act or omission to the same extent as a private person. (Gov. Code § 820 (a).)
- 6) Provides that where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure

to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty. (Gov. Code § 815.6.)

- 7) Provides that a public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked. (Gov. Code § 818.4.)

This bill:

- 1) Clarifies that the EO of the Commission is not liable for an injury resulting from their act or omission where the act or omission was the result of the exercise of the discretion vested in them, whether or not such discretion be abused, except as specified.
 - a) Provides that this provision is declaratory of existing law and does not constitute a change in existing law.
- 2) Extends the sunset on provisions relating to the appointment of the EO and other officers and personnel of the Commission, until January 1, 2025.

COMMENTS

1. Stated need for the bill

The author writes:

AB 1813 will promote the safety of athletes by recognizing that qualified athletes are competing with competent officials officiating those matches. Furthermore, this bill will keep the focus of the Commission to its assigned functions, rather than fighting potentially superfluous litigation as it relates to the acts of discretionary decisions made by the Executive Officer.

2. Immunity under Section 820.2 of the Government Code

Section 820.2 of the Government code provides that a public employee is not liable for an injury resulting from the employee's act or omission where the act or omission was the result of the exercise of the discretion vested in the employee, whether or not such discretion be abused, except as otherwise provided by statute. California courts have provided that a discretionary decision "requires a showing that the specific conduct giving rise to the suit involved an actual exercise of discretion, i.e., a conscious balancing of risks and advantages." (*Caldwell v. Montoya* (1995) 10 Cal. 4th 972, 983.) The California Supreme Court has interpreted Section 820.2 to provide immunity "only with

respect to those 'basic policy decisions' which have been committed to coordinate branches of government, and does not immunize government entities from liability for subsequent ministerial actions taken in the implementation of those basic policy decisions." (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 792.) The Court notes that, "[i]n determining whether discretionary act immunity applies with regard to acts of a public employee, courts must consider whether the acts or omissions of the particular employee resulted from the exercise of discretion within the meaning of section 820.2." (*Barner v. Leeds* (2000) 24 Cal.4th 676, 684.) The Court has further stated "immunity applies only to deliberate and considered policy decisions, in which a conscious balancing of risks and advantages took place. The fact that an employee normally engages in discretionary activity is irrelevant if, in a given case the employee did not render a considered decision." (*Conway v. County of Tuolumne* (2014) 231 Cal. App. 4th 1005, 1015.) The governmental defendant has the burden of proving the acts of its employees fall within the scope of a statutory immunity. (*Lopez, supra*, 40 Cal.3d at p. 794.)

California courts, recognizing the difficulty in precisely defining what is discretionary, have noted that, "a workable definition nevertheless will be one that recognizes that much of what is done by officers and employees of the government must remain beyond the range of judicial inquiry." (*Johnson v. State of California*, (1968) 69 Cal. 2d 782, 793.) Courts have further refined discretion to distinguish "between the employee's operational and policy decisions," holding that a policy-based decision should be allotted greater discretion and protection from liability. (*Barner v. Leeds* (2000) 24 Cal.4th 676, 685.) For example, the decision of a local director of community development to declare a deteriorating residence a nuisance was considered discretionary, even if the action was taken in accordance with the requirements of the city's existing nuisance abatement program, because it required the public employee to utilize their discretion to make the specific determination regarding a specific property. (*Ogborn v. City of Lancaster* (2002) 101 Cal.App.4th 448, 461.) On the other hand, the courts have not extended the protections of Section 820.2 to a land surveyor who filed an inaccurate land survey after following a basic procedural checklist because following the checklist did not, "involve any basic policy decisions." (*Wheeler v. County of San Bernardino* (1978) 76 Cal. App. 3d 841, 849.)

3. This bill intends to clarify that the EO of the Commission is entitled to immunity under Section 820.2 of the Government Code

The Commission, comprised of seven members, is charged with regulating all boxing, kickboxing, and mixed martial arts fights in California. The Commission is tasked with ensuring the health and safety of the public and all participants in these fights. Most of everyday management of the Commission is delegated to the EO. These duties include appointing all referees, judges, and scorekeepers assigned to fights taking place in California. According to the Commission, sponsor of the bill, some of the duties of the Commission's daily affairs are delegable to Commission staff; however, the duties of

reviewing and approving the fights permitted in California, and selection of officials, cannot be delegated and are strictly performed by the EO. They state that the selection of officials is one of the most important duties of the EO because it involves making decisions that directly impact the health and safety of athletes engaged in a life-threatening sport. The Commission states that making a decision regarding who to appoint to a specific fight requires significant effort by the EO. This includes evaluating the referee's experience, training, consoling education, and history of accurately adjudicating fights. Additionally, the EO must ensure adherence to the Commission's anti-nepotism and conflict of interest requirements. The EO solely vested with the decision to select boxing officials for every boxing match and most notably, world championship fights, not for the advancement of a commercial or economic interest on behalf of the Commission or its licensees, but rather for the health and safety of the athletes.

The Commission further notes that even though the EO is a state employee and should be afforded protection under Section 820.2, an ambiguity in existing law leads to the EO often being sued by match officials who are not picked for high profile competitions. The ambiguity under existing law arises under the fact that the Boxing Act specifically provides that referees and other boxing officials appointed by the Commission are entitled to the same rights and immunities granted to public employees under Section 820.2 while those referees and officials are performing duties as required by the Commission. (Bus. & Prof. Code § 18735.) Immunity is specifically granted to referees and other officials appointed by the Commission in this statute because they are not public employees, and therefore, would not be afforded immunity for their acts or omissions under existing law. As a result of this specific grant of immunity under the Boxing Act, some have tried to argue the EO does not have immunity for discretionary acts. There is no evidence to support this assertion and no public policy reason for the EO to be treated any differently under Section 820.2 as any other state employee.

However, the bill's provisions go further than just providing that the immunity for discretionary acts under Section 820.2 applies to the EO because the language in the bill states that discretionary acts include the approval of contests and the assignment of contests. The Legislature has passed statutes deeming or providing specific acts of various state or local employees are discretionary acts under Section 820.2. For example, Section 820.25 of the Government Code deems the decision of a peace officer or a state or local law enforcement official to render assistance to a motorist who has not been involved in an accident or to leave the scene after rendering assistance, upon learning of a reasonably apparent emergency requiring immediate attention elsewhere or upon instructions from a superior to assume duties elsewhere, as an exercise of discretion. Section 12182 of the Government Code requires the preclearance or expedited filing of documents by the Secretary of State or the Secretary's employees related to various business documents to be considered discretionary acts under Section 820.2. Section 2286 of the Food and Agriculture Code specifically provides that immunity doctrine of

Section 820.2 applies to an employee of a county department of agriculture enforcing a state or local pest control or pest eradication, statute, regulation, or ordinance.

Although the EO's decision's regarding approval of contests and assigning of officials to fights seems to fall within the parameters of a deliberate and considered policy decision under the case law, the Commission argues that this bill is needed because the EO has continually been challenged in civil court for approving contests and assigning officials to fights. While the Commission has tended to prevail in these cases, they continue to be forced to defend them at considerable cost to the Commission.

4. Proposed amendment¹

Though the EO's decision's regarding approval of contests and assigning of officials to fights seems to fall within the parameters of a deliberate and considered policy decision under the case law, there is no appellate or superior court decision specifically holding this. Additionally, the Commission and EO are currently in pending litigation that is, among other things, addressing the question of whether the EO's assignment of officials is a discretionary act under Section 820.2. As such, the author may wish to amend the bill to provide that the provision of the bill that states approval of contests and assigning of officials to fights by the EO are discretionary acts under Section 820.2 are not declaratory of existing law.

Amendment

Section 18613 of the Business and Professions Code is amended to read:

18613. (a) (1) The commission shall appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the commission and vested in the executive officer by this chapter. The appointment of the executive officer is subject to the approval of the Director of Consumer Affairs.

(2) The commission may employ a chief athletic inspector. If the commission employs a chief athletic inspector, the chief athletic inspector shall exercise the powers and perform the duties delegated by the commission and authorized by the executive officer related to the regulation of events under this chapter.

(3) The commission may employ an assistant chief athletic inspector. If the commission employs an assistant chief athletic inspector, the assistant chief athletic inspector shall assist the chief athletic inspector in exercising the powers and

¹ The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

performing the duties delegated by the commission and authorized by the executive officer related to the regulation of events under this chapter.

(4) The commission may employ in accordance with Section 154 other personnel as may be necessary for the administration of this chapter.

(b) (1)(A) Pursuant to Section 820.2 of the Government Code, the executive officer appointed pursuant to this section shall not be liable for discretionary acts, including the approval of contests and the assignment of officials for contests, acts taken while performing duties pursuant to this chapter.

~~(2) (B) This subdivision paragraph~~ is declaratory of existing law and does not constitute a change in existing law.

(2) The approval of contests and the assignment of officials for contests by the executive officer under this chapter shall be considered discretionary acts pursuant to Section 820.2 of the Government Code.

(c) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

SUPPORT

State Athletic Commission (sponsor)
Association of Boxing Commissions and Combating Sports
Ultimate Fighting Championship (UFC)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

PRIOR VOTES:

Senate Business, Professions and Economic Development Committee (Ayes 12, Noes 0)
Assembly Floor (Ayes 74, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 0)
Assembly Arts, Entertainment, Sports, Tourism, and Internet Media Committee (Ayes 7, Noes 0)
