

UPDATE TO STAFF ANALYSIS OF AB 2138
June 25, 2018

AB 2138 was amended in the Senate on June 20, 2018. These amendments concur with those described in the Senate Business, Professions & Economic Development (BP&ED) Committee analysis (the analysis begins on Page 44 of the meeting materials packet). The June 20 version is included with this update for the Board's review. Also included for the Board's reference is a document entitled "Today's Law As Amended – 6/20/18 Amendments." This document shows the current law ("today's law") with the changes that would be made based on the June 20 version of AB 2138, which makes it clearer to see how the laws would change.

The amendments in the June 20 version of AB 2138 do address many of the Board's concerns. The provision that would have restricted the probationary period to only two years has been removed. Additionally, all of the amendments proposed to be made to existing Business and Professions Code section 490 have been removed, so that section would remain unchanged from current law. Section 490 allows the Board to take disciplinary action against a licensee who has been convicted of a crime that is substantially related to the qualifications, functions, and duties of the profession. Thus, the Board would not be precluded from considering all convictions against a licensee in determining whether disciplinary action is warranted, whereas previous versions of the bill would have placed restrictions on what convictions could be considered. Furthermore, previous versions of the bill proposed to change the phrase "substantially related" to "directly and adversely related"; the June 20 amendments change the phrase back to "substantially related," as is used in current law and is addressed in case law relating to professional licensing matters.

However, other amendments, or lack thereof, do not address the Board's concerns. Business and Professions Code section 480 currently allows the Board to deny issuing a license if the applicant has been convicted of a crime or if the applicant has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another, or done any act that if done by a licensee would be grounds for suspension or revocation of the license, as long as the crime or act was substantially related to the qualifications, functions, and duties of the profession. Prior versions of AB 2138 removed the provisions relating to the acts of dishonesty, fraud, or deceit and those if done by a licensee would be grounds for action. The June 20 amendments still removes these provisions. Additionally, prior versions placed restrictions on what crimes the Board could consider against an applicant. Specifically, a five-year "wash-out" period was included so that if the conviction occurred more than five years ago, it could not be considered; the only exemption to this were crimes defined in the Penal Code as "violent felonies." The Board had concerns with the restriction that only allowed consideration of "violent felonies" since they do not include felonies that relate to the professions the Board regulates, such as fraud, embezzlement, submission of false or forged documents to a public agency, and diversion of public funds. The June 20 amendments change the "wash-out" period from five years to seven years and expand the crimes that can be considered after that

period to include “serious felonies” as defined in the Penal Code. However, “serious felonies” still do not include the financial or “white collar” type of crimes that relate to the Board’s regulated professions.

Board staff remains concerned that the changes proposed in AB 2138 to be made to the laws regarding what the Board may consider in determining whether to issue a license fail to place protection of the public as the highest priority. If the Board were to learn that an applicant who had been convicted of fraud or embezzlement beyond the seven-year “wash-out” period, the Board would be precluded from considering this information, and even from requesting evidence of rehabilitation, when determining whether to grant a license to the applicant, thus preventing the Board from considering all relevant and appropriate information to determine if a person is fit to practice with due regard to the health, safety, and welfare of the public.

This bill is scheduled to be heard in Senate Public Safety Committee on June 26. The Committee analysis, which raises pertinent questions that coincide with some of the Board’s concerns, is included for reference. An update of that hearing will be provided at the Board meeting.

BOARD ACTION:

Since AB 2138 has been amended since the Board took its **OPPOSE** position, the Board does need to take action on the current (June 20, 2018) version of the bill. The Board could choose to continue to oppose the bill due to policy concerns; to oppose the bill unless it is amended to include, at a minimum, more crimes than just “serious felonies”; or to remove its opposition.

AMENDED IN SENATE JUNE 20, 2018

AMENDED IN ASSEMBLY MAY 25, 2018

AMENDED IN ASSEMBLY APRIL 2, 2018

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 2138

Introduced by Assembly Members Chiu and Low

February 12, 2018

An act to amend Sections 7.5, 480, 481, 482, 488, ~~490, 492,~~ 493, and 11345.2 ~~of, and to add Section 481.5 to,~~ of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2138, as amended, Chiu. Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license or take disciplinary action against a licensee on the grounds that the applicant or licensee has, among other things, been convicted of a crime, as specified. Existing law provides that a person shall not be denied a license solely on the basis that the person has been convicted of a felony if he or she has obtained a certificate of rehabilitation or that the person has been convicted of a misdemeanor if he or she has met applicable requirements of rehabilitation developed by the board, as specified. Existing law also prohibits a person from being denied a license solely on the basis of a conviction that has been dismissed, as specified. Existing law requires a board to develop criteria to aid it when considering the denial, suspension, or revocation of a license to

determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates and requires a board to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license.

This bill would revise and recast those provisions to instead authorize a board to, among other things, deny, revoke, or suspend a license on the grounds that the applicant or licensee has been convicted of a crime only if the applicant or licensee is presently incarcerated or if the conviction, as defined, occurred within the preceding ~~5~~ 7 years, except for ~~violent~~ *serious* felonies, and would require the crime to be ~~directly and adversely~~ *substantially* related to the qualifications, functions, or duties of the business or profession. The bill would prohibit a board from denying a person a license based on the conviction of a crime, or on the basis of acts underlying a conviction for a crime, if the conviction has been dismissed or expunged, if the person has ~~made a showing~~ *provided evidence* of rehabilitation, if the person has been granted clemency or a pardon, or if an arrest resulted in a disposition other than a conviction. ~~The bill would provide that these provisions relating to denial, revocation, or suspension of a license would supersede contradictory provisions in specified existing law.~~

The bill would require the board to develop criteria for determining whether a crime is ~~directly and adversely~~ *substantially* related to the qualifications, functions, or duties of the business or profession. The bill would require a board to find that a person has made a showing of rehabilitation if certain conditions are met. The bill would require a board to follow certain procedures when requesting or acting on an applicant's or licensee's criminal history information. The bill would also require a board to annually submit a report to the Legislature and post the report on its Internet Web site containing specified deidentified information regarding actions taken by a board based on an applicant or licensee's criminal history information.

Existing law authorizes a board to deny a license on the grounds that an applicant knowingly made a false statement of fact that is required to be revealed in the application for licensure.

This bill would prohibit a board from denying a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had the fact been disclosed.

~~Existing law authorizes specified agencies to take disciplinary action against a licensee or deny a license for professional misconduct if the~~

~~licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs.~~

~~This bill would instead prohibit a board from taking disciplinary action against a licensee or denying a license for professional misconduct if the licensee has successfully completed certain diversion programs or alcohol and drug problem assessment programs or deferred entry of judgment.~~

~~Existing law authorizes a board board, after a specified hearing requested by an applicant for licensure to take various actions, including imposing probationary conditions on the licensee: actions in relation to denying or granting the applicant the license.~~

~~This bill would additionally authorize a board to grant the license and immediately issue a public reproof. The bill would limit probationary terms or restrictions placed on a license by a board to 2 years or less and would authorize additional conditions to be imposed only if the board determines that there is clear and convincing evidence that additional conditions are necessary to address a risk shown by clear and convincing evidence. The bill would require a board to develop criteria to aid it in considering the imposition of probationary conditions and to determine what conditions may be imposed. The bill would authorize a licensee or registrant whose license or registration has been placed on probation to petition the board for a change to that probation one year from the effective date of the board's decision, would require the board to issue a decision on the petition within 90 days, and would deem the petition granted if the board does not file a decision denying the petition within 90 days: revise and recast those provisions to eliminate some of the more specific options that the board may take in these circumstances.~~

~~This bill would also make necessary conforming changes.~~

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

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

- 1 SECTION 1. Section 7.5 of the Business and Professions Code
- 2 is amended to read:
- 3 7.5. (a) A conviction within the meaning of this code means
- 4 a judgment following a plea or verdict of guilty or a plea of nolo
- 5 contendere or finding of guilt. Any action which a board is
- 6 permitted to take following the establishment of a conviction may

1 be taken when the time for appeal has elapsed, or the judgment of
 2 conviction has been affirmed on appeal or when an order granting
 3 probation is made suspending the imposition of sentence. However,
 4 a board may not deny a license to an applicant who is otherwise
 5 qualified pursuant to subdivision (b) or (c) of Section 480.

6 (b) (1) Nothing in this section shall apply to the licensure of
 7 persons pursuant to Chapter 4 (commencing with Section 6000)
 8 of Division 3.

9 (2) *The changes made to this section by the act adding this*
 10 *paragraph do not in any way modify or otherwise affect the existing*
 11 *authority of the following entities in regard to licensure:*

12 (A) *The State Athletic Commission.*

13 (B) *The Bureau for Private Postsecondary Education.*

14 (c) Except as provided in subdivision (b), this section controls
 15 over and supersedes the definition of conviction contained within
 16 individual practice acts under this code.

17 SEC. 2. Section 480 of the Business and Professions Code is
 18 amended to read:

19 480. (a) ~~(1)~~ Notwithstanding any other provision of this code,
 20 a board may deny a license regulated by this code on the grounds
 21 that the applicant has been convicted of a crime or has been subject
 22 to formal discipline only if either of the following conditions are
 23 met:

24 ~~(A)~~

25 (1) The applicant has been convicted of a crime for which the
 26 applicant is presently incarcerated or for which the conviction
 27 occurred within the preceding ~~five~~ *seven* years. However, the
 28 preceding ~~five-year~~ *seven-year* limitation shall not apply to a
 29 conviction for a ~~violent~~ *serious* felony, as defined in ~~Section 667.5~~
 30 ~~of~~ the Penal Code.

31 The board may deny a license pursuant to this subparagraph only
 32 if the crime is ~~directly and adversely~~ *substantially* related to the
 33 qualifications, functions, or duties of the business or profession
 34 for which application is made.

35 ~~(B)~~

36 (2) The applicant has been subjected to formal discipline by a
 37 licensing board within the preceding five years based on
 38 professional misconduct that would have been cause for discipline
 39 before the board for which the present application is made and that
 40 is ~~directly and adversely~~ *substantially* related to the qualifications,

1 functions, or duties of the business or profession for which the
 2 present application is made. However, prior disciplinary action by
 3 a licensing board within the preceding ~~five~~ *seven* years shall not
 4 be the basis for denial of a license if the basis for that disciplinary
 5 action was a conviction that has been dismissed pursuant to Section
 6 1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable
 7 dismissal or expungement.

8 ~~(2) Denial of a license includes denial of an unrestricted license
 9 by issuance of a restricted or probationary license.~~

10 (b) Notwithstanding any other provision of this code, a person
 11 shall not be denied a license on the basis that he or she has been
 12 convicted of a crime, or on the basis of acts underlying a conviction
 13 for a crime, if he or she has obtained a certificate of rehabilitation
 14 under Chapter 3.5 (commencing with Section 4852.01) of Title 6
 15 of Part 3 of the Penal Code, has been granted clemency or a pardon
 16 by a state or federal executive, or ~~has made a showing~~ *provided*
 17 *evidence* of rehabilitation pursuant to Section 482.

18 (c) Notwithstanding any other provision of this code, a person
 19 shall not be denied a license on the basis of any conviction, or on
 20 the basis of the acts underlying the conviction, that has been
 21 dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the
 22 Penal Code, or a comparable dismissal or expungement. An
 23 applicant who has a conviction that has been dismissed pursuant
 24 to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code
 25 shall provide proof of the dismissal if it is not reflected on the
 26 report furnished by the Department of Justice.

27 (d) Notwithstanding any other provision of this code, a board
 28 shall not deny a license on the basis of an arrest that resulted in a
 29 disposition other than a conviction, including an arrest that resulted
 30 in an infraction, citation, or a juvenile adjudication.

31 (e) A board may deny a license regulated by this code on the
 32 ground that the applicant knowingly made a false statement of fact
 33 that is required to be revealed in the application for the license. A
 34 board shall not deny a license based solely on an applicant's failure
 35 to disclose a fact that would not have been cause for denial of the
 36 license had it been disclosed.

37 (f) A board shall follow the following procedures in requesting
 38 or acting on an applicant's criminal history information:

- 1 (1) A board shall not require an applicant for licensure to
2 disclose any information or documentation regarding the
3 applicant's criminal history.
- 4 (2) If a board decides to deny an application based solely or in
5 part on the applicant's conviction history, the board shall notify
6 the applicant in writing of all of the following:
- 7 (A) The denial or disqualification of licensure.
- 8 (B) Any existing procedure the board has for the applicant to
9 challenge the decision or to request reconsideration.
- 10 (C) That the applicant has the right to appeal the board's
11 decision.
- 12 (D) The processes for the applicant to request a copy of his or
13 her complete conviction history and question the accuracy or
14 completeness of the record pursuant to Sections 11122 to 11127
15 of the Penal Code.
- 16 (g) (1) For a minimum of three years, each board under this
17 code shall retain application forms and other documents submitted
18 by an applicant, any notice provided to an applicant, all other
19 communications received from and provided to an applicant, and
20 criminal history reports of an applicant.
- 21 (2) Each board under this code shall retain the number of
22 applications received for each license and the number of
23 applications requiring inquiries regarding criminal history. In
24 addition, each licensing authority shall retain all of the following
25 information:
- 26 (A) The number of applicants with a criminal record who
27 received notice of denial or disqualification of licensure.
- 28 (B) The number of applicants with a criminal record who
29 provided evidence of mitigation or rehabilitation.
- 30 (C) The number of applicants with a criminal record who
31 appealed any denial or disqualification of licensure.
- 32 (D) The final disposition and demographic information,
33 including, but not limited to, voluntarily provided information on
34 race or gender, of any applicant described in subparagraph (A),
35 (B), or (C).
- 36 (3) (A) Each board under this code shall annually make
37 available to the public through the board's Internet Web site and
38 through a report submitted to the appropriate policy committees
39 of the Legislature deidentified information collected pursuant to

1 this subdivision. Each board shall ensure confidentiality of the
2 individual applicants.

3 (B) A report pursuant to subparagraph (A) shall be submitted
4 in compliance with Section 9795 of the Government Code.

5 (h) "Conviction" as used in this section shall have the same
6 meaning as defined in Section 7.5.

7 ~~(i) This section supersedes any contradictory provision in a
8 licensing act under this code or initiative act referred to in Division
9 2 (commencing with Section 500) that authorizes license denial
10 based on a criminal conviction, arrest, or the acts underlying an
11 arrest or conviction.~~

12 *(i) The changes made to this section by the act adding this
13 subdivision do not in any way modify or otherwise affect the
14 existing authority of the following entities in regard to licensure:*

15 *(1) The State Athletic Commission.*

16 *(2) The Bureau for Private Postsecondary Education.*

17 SEC. 3. Section 481 of the Business and Professions Code is
18 amended to read:

19 481. (a) Each board under this code shall develop criteria to
20 aid it, when considering the denial, suspension, or revocation of
21 a license, to determine whether a crime is ~~directly and adversely~~
22 *substantially* related to the qualifications, functions, or duties of
23 the business or profession it regulates.

24 (b) Criteria for determining whether a crime is ~~directly and~~
25 ~~adversely~~ *substantially* related to the qualifications, functions, or
26 duties of the business or profession a board regulates shall include
27 all of the following:

28 (1) The nature and gravity of the offense.

29 (2) The number of years elapsed since the date of the offense.

30 (3) The nature and duties of the profession in which the applicant
31 seeks licensure or in which the licensee is licensed.

32 (c) A board shall not deny a license based in whole or in part
33 on a conviction without considering evidence of rehabilitation.

34 (d) Each board shall post on its Internet Web site a summary of
35 the criteria used to consider whether a crime is considered to be
36 ~~directly and adversely~~ *substantially* related to the qualifications,
37 functions, or duties of the business or profession it regulates
38 consistent with this section.

1 (e) The changes made to this section by the act adding this
2 subdivision do not in any way modify or otherwise affect the
3 existing authority of the following entities in regard to licensure:

- 4 (1) The State Athletic Commission.
- 5 (2) The Bureau for Private Postsecondary Education.

6 ~~SEC. 4.~~ Section 481.5 is added to the Business and Professions
7 Code, to read:

8 481.5. (a) Probationary terms or restrictions placed on a license
9 by a board shall be limited to two years or less. Any additional
10 conditions may be imposed only if the board determines that there
11 is clear and convincing evidence that additional conditions are
12 necessary to address a risk shown by clear and convincing
13 evidence.

14 (b) Each board under this code shall develop criteria to aid it
15 when considering the imposition of probationary conditions or
16 restrictions to determine what conditions may be imposed to
17 address a risk shown by clear and convincing evidence.

18 (c) (1) A licensee or registrant whose license or registration
19 has been placed on probation may petition the board for a change
20 to the probation, including modification or termination of
21 probation, one year from the effective date of the decision. The
22 board shall issue its decision on the petition within 90 days of
23 submission of the petition. The petition shall be deemed granted
24 by operation of law if the board does not file a decision denying
25 the petition within 90 days of submission of the petition.

26 (2) The one-year time period to petition for modification or
27 termination of penalty shall control over longer time periods under
28 a licensing act under this code or initiative act referred to in
29 Division 2 (commencing with Section 500).

30 ~~SEC. 5.~~

31 *SEC. 4.* Section 482 of the Business and Professions Code is
32 amended to read:

33 482. (a) Each board under this code shall develop criteria to
34 evaluate the rehabilitation of a person when doing either of the
35 following:

- 36 (1) Considering the denial of a license by the board under
37 Section 480.
- 38 (2) Considering suspension or revocation of a license under
39 Section 490.

1 (b) Each board shall ~~find~~ *consider* that an applicant or licensee
2 has made a showing of rehabilitation if ~~any~~ *either* of the following
3 are met:

4 (1) The applicant or licensee has completed the criminal
5 sentence at issue without a violation of parole or probation.

6 ~~(2) (A) The applicant or licensee documents that he or she has~~
7 ~~worked in a related field continuously for at least one year prior~~
8 ~~to licensure or successfully completed a course of training in a~~
9 ~~related field, unless the board finds a public record of an official~~
10 ~~finding that the applicant committed professional misconduct in~~
11 ~~the course of that work.~~

12 ~~(B) Work in a related field may include, but is not limited to,~~
13 ~~work performed without compensation and work performed while~~
14 ~~incarcerated.~~

15 ~~(C) "Related field," for purposes of this paragraph, means a~~
16 ~~field of employment whose duties are substantially similar to the~~
17 ~~field regulated by the board.~~

18 ~~(3)~~

19 (2) The applicant or licensee has satisfied criteria for
20 rehabilitation developed by the board.

21 (c) *The changes made to this section by the act adding this*
22 *subdivision do not in any way modify or otherwise affect the*
23 *existing authority of the following entities in regard to licensure:*

24 (1) *The State Athletic Commission.*

25 (2) *The Bureau for Private Postsecondary Education.*

26 ~~SEC. 6.~~

27 *SEC. 5.* Section 488 of the Business and Professions Code is
28 amended to read:

29 488. Except as otherwise provided by law, following a hearing
30 requested by an applicant pursuant to subdivision (b) of Section
31 485, the board may take any of the following actions:

32 (a) Grant the license effective upon completion of all licensing
33 requirements by the applicant.

34 ~~(b) Grant the license effective upon completion of all licensing~~
35 ~~requirements by the applicant, grant the license and immediately~~
36 ~~issue a public reproof pursuant to Section 495, immediately revoke~~
37 ~~the license, stay the revocation, and impose probationary conditions~~
38 ~~on the license, which may include suspension.~~

39 (e)

40 (b) Deny the license.

1 ~~(d)~~
 2 (c) Take other action in relation to denying or granting the
 3 license as the board in its discretion may deem proper.

4 (d) *The changes made to this section by the act adding this*
 5 *subdivision do not in any way modify or otherwise affect the*
 6 *existing authority of the following entities in regard to licensure:*

- 7 (1) *The State Athletic Commission.*
- 8 (2) *The Bureau for Private Postsecondary Education.*

9 ~~SEC. 7. Section 490 of the Business and Professions Code is~~
 10 ~~amended to read:~~

11 ~~490. (a) (1) In addition to any other action that a board is~~
 12 ~~permitted to take against a licensee, a board may suspend or revoke~~
 13 ~~a license on the ground that the licensee has been convicted of a~~
 14 ~~crime for which the applicant is presently incarcerated or for which~~
 15 ~~the conviction occurred within the preceding five years. However,~~
 16 ~~the preceding five year limitation shall not apply to a conviction~~
 17 ~~for a violent felony, as defined in Section 667.5 of the Penal Code.~~

18 ~~(2) The board may suspend or revoke a license pursuant to this~~
 19 ~~subdivision only if the crime is directly and adversely related to~~
 20 ~~the qualifications, functions, or duties of the business or profession~~
 21 ~~for which application is made.~~

22 ~~(b) Notwithstanding any other provision of law, a board may~~
 23 ~~exercise any authority to discipline a licensee for conviction of a~~
 24 ~~crime that is independent of the authority granted under subdivision~~
 25 ~~(a) only if both of the following are met:~~

26 ~~(1) The crime is directly and adversely related to the~~
 27 ~~qualifications, functions, or duties of the business or profession~~
 28 ~~for which the licensee's license was issued.~~

29 ~~(2) The licensee was convicted of the crime within the preceding~~
 30 ~~five years or is presently incarcerated for the crime. However, the~~
 31 ~~preceding five year limitation shall not apply to a conviction for~~
 32 ~~a violent felony, as defined in Section 667.5 of the Penal Code.~~

33 ~~(e) Notwithstanding any other provision of this code, a board~~
 34 ~~shall not suspend or revoke a license on the basis of a conviction,~~
 35 ~~or of the acts underlying a conviction, where that conviction has~~
 36 ~~been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or~~
 37 ~~1203.42 of the Penal Code or a comparable dismissal or~~
 38 ~~expungement.~~

39 ~~(d) Notwithstanding any other provision of this code, a board~~
 40 ~~shall not suspend or revoke a license on the basis of an arrest that~~

1 resulted in a disposition other than a conviction, including an arrest
2 that resulted in an infraction, citation, or juvenile adjudication.

3 (e) ~~The board shall use the following procedures in requesting
4 or acting on a licensee's criminal history information:~~

5 (1) ~~A board shall not require a licensee to disclose any
6 information or documentation regarding the licensee's criminal
7 history.~~

8 (2) ~~If a board chooses to file an accusation against a licensee
9 based solely or in part on the licensee's conviction history, the
10 board shall notify the licensee in writing of the processes for the
11 licensee to request a copy of the licensee's complete conviction
12 history and question the accuracy or completeness of his or her
13 criminal record pursuant to Sections 11122 to 11127, inclusive,
14 of the Penal Code.~~

15 (f) (1) ~~For a minimum of three years, each board under this
16 code shall retain all documents submitted by a licensee, notices
17 provided to a licensee, all other communications received from or
18 provided to a licensee, and criminal history reports of a licensee.~~

19 (2) ~~Each board under this code shall retain all of the following
20 information:~~

21 (A) ~~The number of licensees with a criminal record who received
22 notice of potential revocation or suspension of their license or who
23 had their license suspended or revoked.~~

24 (B) ~~The number of licensees with a criminal record who
25 provided evidence of mitigation or rehabilitation.~~

26 (C) ~~The number of licensees with a criminal record who
27 appealed any suspension or revocation of a license.~~

28 (D) ~~The final disposition and demographic information,
29 including, but not limited to, voluntarily provided information on
30 race or gender, of any applicant described in subparagraph (A),
31 (B), or (C).~~

32 (3) (A) ~~Each board under this code shall annually make
33 available to the public through the board's Internet Web site and
34 through a report submitted to the appropriate policy committees
35 of the Legislature deidentified information collected pursuant to
36 this subdivision. Each board shall ensure the confidentiality of the
37 individual licensees.~~

38 (B) ~~A report pursuant to subparagraph (A) shall be submitted
39 in compliance with Section 9795 of the Government Code.~~

1 ~~(g) (1) This section supersedes any contradictory provision in~~
2 ~~a licensing act under this code or initiative act referred to in~~
3 ~~Division 2 (commencing with Section 500) that authorizes action~~
4 ~~based on a criminal conviction, arrest, or the acts underlying an~~
5 ~~arrest or conviction.~~

6 ~~(2) This section shall not prohibit any agency from taking~~
7 ~~disciplinary action against a licensee for professional misconduct~~
8 ~~in the course and scope of the licensee’s profession that is based~~
9 ~~on evidence that is independent of an arrest.~~

10 ~~SEC. 8. Section 492 of the Business and Professions Code is~~
11 ~~amended to read:~~

12 ~~492. (a) Notwithstanding any other provision of law, successful~~
13 ~~completion of any diversion program under the Penal Code,~~
14 ~~successful completion by a licensee or applicant of any~~
15 ~~nonstatutory diversion program, deferred entry of judgment, or~~
16 ~~successful completion of an alcohol and drug problem assessment~~
17 ~~program under Article 5 (commencing with Section 23249.50) of~~
18 ~~Chapter 12 of Division 11 of the Vehicle Code, shall prohibit any~~
19 ~~board from taking disciplinary action against a licensee or from~~
20 ~~denying a license for professional misconduct.~~

21 ~~(b) This section shall not prohibit any agency established under~~
22 ~~Division 2 (commencing with Section 500) of this code, or any~~
23 ~~initiative act referred to in that division, from taking disciplinary~~
24 ~~action against a licensee for professional misconduct in the course~~
25 ~~and scope of the profession, which is based on evidence that is~~
26 ~~independent of an arrest.~~

27 ~~SEC. 9.~~

28 ~~SEC. 6. Section 493 of the Business and Professions Code is~~
29 ~~amended to read:~~

30 ~~493. (a) Notwithstanding any other provision of law, in a~~
31 ~~proceeding conducted by a board within the department pursuant~~
32 ~~to law to deny an application for a license or to suspend or revoke~~
33 ~~a license or otherwise take disciplinary action against a person~~
34 ~~who holds a license, upon the ground that the applicant or the~~
35 ~~licensee has been convicted of a crime directly and adversely~~
36 ~~substantially related to the qualifications, functions, and duties of~~
37 ~~the licensee in question, the record of conviction of the crime shall~~
38 ~~be conclusive evidence of the fact that the conviction occurred,~~
39 ~~but only of that fact.~~

1 (b) (1) Criteria for determining whether a crime is ~~directly and~~
2 ~~adversely~~ *substantially* related to the qualifications, functions, or
3 duties of the business or profession the board regulates shall include
4 all of the following:

5 (A) The nature and gravity of the offense.

6 (B) The number of years elapsed since the date of the offense.

7 (C) The nature and duties of the profession.

8 (2) A board shall not categorically bar an applicant based solely
9 on the type of conviction without considering evidence of
10 rehabilitation.

11 (c) As used in this section, “license” includes “certificate,”
12 “permit,” “authority,” and “registration.”

13 (d) *The changes made to this section by the act adding this*
14 *subdivision do not in any way modify or otherwise affect the*
15 *existing authority of the following entities in regard to licensure:*

16 (1) *The State Athletic Commission.*

17 (2) *The Bureau for Private Postsecondary Education.*

18 ~~SEC. 10.~~

19 *SEC. 7.* Section 11345.2 of the Business and Professions Code
20 is amended to read:

21 11345.2. (a) An individual shall not act as a controlling person
22 for a registrant if any of the following apply:

23 (1) The individual has entered a plea of guilty or no contest to,
24 or been convicted of, a felony. If the individual’s felony conviction
25 has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41
26 of the Penal Code, the bureau may allow the individual to act as
27 a controlling person.

28 (2) The individual has had a license or certificate to act as an
29 appraiser or to engage in activities related to the transfer of real
30 property refused, denied, canceled, or revoked in this state or any
31 other state.

32 (b) Any individual who acts as a controlling person of an
33 appraisal management company and who enters a plea of guilty
34 or no contest to, or is convicted of, a felony, or who has a license
35 or certificate as an appraiser refused, denied, canceled, or revoked
36 in any other state shall report that fact or cause that fact to be
37 reported to the office, in writing, within 10 days of the date he or
38 she has knowledge of that fact.

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TODAY'S LAW AS AMENDED – 6/20/18 AMENDMENTS

Business and Professions Code

Section 7.5.

(a) A conviction within the meaning of this code means a *judgment following a plea or verdict of guilty or a conviction following a plea of nolo contendere.* Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of ~~sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.~~ *sentence.* However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) *or (c)* of Section 480.

(b) (1) Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

(2) *The changes made to this section by the act adding this paragraph do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:*

(A) *The State Athletic Commission.*

(B) *The Bureau for Private Postsecondary Education.*

(c) *Except as provided in subdivision (b), this section controls over and supersedes the definition of conviction contained within individual practice acts under this code.*

Section 480.

(a) ~~A~~ *Notwithstanding any other provision of this code, a* board may deny a license regulated by this code on the grounds that the applicant has ~~one of the following:~~ *been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:*

(1) ~~Been~~ *The applicant has been* convicted of a ~~crime.~~ *A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the* ~~crime~~ *for which the applicant is presently incarcerated or for which the conviction occurred within the preceding seven years. However, the preceding seven-year limitation shall not apply to a conviction for a serious felony, as defined in the* Penal Code.

(2) ~~Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.~~

(3) (A) ~~Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.~~

(B) ~~The board may deny a license pursuant to this~~ *subdivision subparagraph* only if the crime ~~or act~~ is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(2) *The applicant has been subjected to formal discipline by a licensing board within the preceding five years based on professional misconduct that would have been cause for discipline before the board for which the present application is made and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application*

is made. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code or a comparable dismissal or expungement.

(b) Notwithstanding any other provision of this code, a person shall not be denied a license ~~solely~~ on the basis that he or she has been convicted of a ~~felony~~ crime, or on the basis of acts underlying a conviction for a crime, if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal ~~Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of~~ Code, has been granted clemency or a pardon by a state or federal executive, or has provided evidence of rehabilitation pursuant to Section 482.

(c) Notwithstanding any other ~~provisions~~ provision of this code, a person shall not be denied a license ~~solely~~ on the basis of ~~a conviction~~ any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal ~~Code~~ Code, or a comparable dismissal or expungement. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, ~~1203.41~~ 1203.42 of the Penal Code shall provide proof of the ~~dismissal~~ dismissal if it is not reflected on the report furnished by the Department of Justice.

(d) Notwithstanding any other provision of this code, a board shall not deny a license on the basis of an arrest that resulted in a disposition other than a conviction, including an arrest that resulted in an infraction, citation, or a juvenile adjudication.

~~(d)~~ (e) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. A board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

(f) A board shall follow the following procedures in requesting or acting on an applicant's criminal history information:

(1) A board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history.

(2) If a board decides to deny an application based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of all of the following:

(A) The denial or disqualification of licensure.

(B) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.

(C) That the applicant has the right to appeal the board's decision.

(D) The processes for the applicant to request a copy of his or her complete conviction history and question the accuracy or completeness of the record pursuant to Sections 11122 to 11127 of the Penal Code.

(g) (1) For a minimum of three years, each board under this code shall retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant.

(2) Each board under this code shall retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. In addition, each licensing authority shall retain all of the following information:

(A) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.

(B) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.

(C) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.

(D) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant described in subparagraph (A), (B), or (C).

(3) (A) Each board under this code shall annually make available to the public through the board's Internet Web site and through a report submitted to the appropriate policy committees of the Legislature deidentified information collected pursuant to this subdivision. Each board shall ensure confidentiality of the individual applicants.

(B) A report pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(h) "Conviction" as used in this section shall have the same meaning as defined in Section 7.5.

(i) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

Section 481.

(a) Each board under ~~the provisions of~~ this code shall develop criteria to aid it, when considering the denial, ~~suspension~~ suspension, or revocation of a license, to determine whether a crime ~~or act~~ is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

(b) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following:

(1) The nature and gravity of the offense.

(2) The number of years elapsed since the date of the offense.

(3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(c) A board shall not deny a license based in whole or in part on a conviction without considering evidence of rehabilitation.

(d) Each board shall post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

(e) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

Section 482.

(a) Each board under ~~the provisions of~~ this code shall develop criteria to evaluate the rehabilitation of a person ~~when:~~ *when doing either of the following:*

~~(a) (1) Considering the denial of a license by the board under Section 480; or 480.~~

~~(b) (2) Considering suspension or revocation of a license under Section 490.~~

(b) Each board shall ~~take into account all competent evidence of rehabilitation furnished by the applicant or licensee.~~ *consider that an applicant or licensee has made a showing of rehabilitation if either of the following are met:*

(1) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.

(2) The applicant or licensee has satisfied criteria for rehabilitation developed by the board.

(c) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

Section 488.

Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

(a) Grant the license effective upon completion of all licensing requirements by the applicant.

~~(b) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.~~

~~(c) (b) Deny the license.~~

~~(d) (c) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.~~

(d) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

Section 493.

(a) Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that ~~fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.~~ *fact.*

(b) (1) Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession the board regulates shall include all of the following:

(A) The nature and gravity of the offense.

(B) The number of years elapsed since the date of the offense.

(C) The nature and duties of the profession.

(2) A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.

(c) As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

(d) The changes made to this section by the act adding this subdivision do not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.

(2) The Bureau for Private Postsecondary Education.

Section 11345.2.

(a) An individual shall not act as a controlling person for a registrant if any of the following apply:

(1) The individual has entered a plea of guilty or no contest to, or been convicted of, a felony. ~~Notwithstanding subdivision (c) of Section 480, if~~ *If* the individual’s felony conviction has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code, the bureau may allow the individual to act as a controlling person.

(2) The individual has had a license or certificate to act as an appraiser or to engage in activities related to the transfer of real property refused, denied, canceled, or revoked in this state or any other state.

(b) Any individual who acts as a controlling person of an appraisal management company and who enters a plea of guilty or no contest to, or is convicted of, a felony, or who has a license or certificate as an appraiser refused, denied, canceled, or revoked in any other state shall report that fact or cause that fact to be reported to the office, in writing, within 10 days of the date he or she has knowledge of that fact.

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2138 **Hearing Date:** June 26, 2018
Author: Chiu
Version: June 20, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Licensing Boards: Denial of Application: Revocation or Suspension of Licensure:
Criminal Conviction*

HISTORY

Source: Alliance for Boys and Men of Color; East Bay Community Law Center; Root & Rebound

Prior Legislation: None

Support: A New Way of Life Reentry Project; Alameda County Public Defender's Office; All of us or None; American Civil Liberties Union of California; Anchor of Hope; Anti Recidivism Coalition; Bay Area Legal Aid; Bayview Hunters Point Foundation for Community Improvement, Inc.; California Immigrant Policy Center; California Labor Federation; California Landscape Contractors Association; California Landscape Contractors Association; California Pan-Ethnic Health Network; California Public Defenders Association; Center for Employment Opportunities; Center on Juvenile and Criminal Justice; City and County of San Francisco; Checkr, Inc.; Courage Campaign; Downtown Women's Center; Ella Baker Center for Human Rights; Hunters Point Family; Lawyers' Committee for Civil Rights of San Francisco Bay Area; Leadership for Urban Renewal Network; Los Angeles Regional Reentry Partnership; National Association of Social Workers, California Chapter; National Employment Law Project; Oakland Private Industry Council, Inc.; Planting Justice; PolicyLink; REDF; Rise Together; Roots Community Health Center; Rubicon; San Francisco Conservation Corps; San Francisco Public Defender's Office; Young Women's Freedom Center

Opposition: Board for Professional Engineers, Land Surveyors and Geologists; Board of Behavioral Sciences; California Board of Accountancy; California Board of Psychology; California State Board of Pharmacy; Contractors State License Board; Medical Board of California; Physician Assistant Board

Assembly Floor Vote: 45 - 29

PURPOSE

This bill limits the current discretion provided to regulatory entities within the Department of Consumer Affairs (DCA) to apply criminal history background, as it relates to denial of an application for licensure and suspension or revocation of an existing license, by specifying that these actions can be taken if the applicant or licensee was formally convicted of a crime substantially related to the qualifications, functions or duties for which the individual is seeking licensure or is licensed.

Existing law establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency with various regulatory boards, bureaus, committees, and commissions under the DCA's jurisdiction. (Business and Professions Code (BPC) §§ 100-101)

Existing law specifies that "board" as used in BPC also includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (BPC § 22)

Existing law provides that all boards within the DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. (BPC § 101.6)

Existing law authorizes a board to deny a professional license issued under its jurisdiction if the applicant has any of the following:

- a) Been convicted of a crime.
- b) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- c) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license. (BPC § 480)

Existing law limits a board's authority to deny a license to instances where the applicant's crime or act is substantially related to the qualifications, functions, or duties of the profession for which application is made. (*Id.*)

Existing law states that a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation. (*Id.*)

Existing law permits a board to deny an application for a license on the ground that the applicant knowingly made a false statement of fact that is required to be revealed in the application for the license. (*Id.*)

Existing law prohibits a board from denying an application for a license solely based on a criminal conviction that has been dismissed. (*Id.*)

Existing law states that a person shall not be denied a license solely based on prior conviction of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation

developed by the board to evaluate the rehabilitation of a person when considering the denial of a license. (*Id.*)

Existing law requires each board to develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates. (BPC § 481)

Existing law requires each board to develop criteria to evaluate the rehabilitation of a person for purposes of considering the denial of a license application or considering suspension or revocation of a current license. (BPC § 482)

Existing law authorizes a board to revoke or suspend a current license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. (BPC § 490)

Existing law permits a board to suspend a license in the event that an applicant is not in compliance with a child support order or judgment. (BPC § 490.5)

Existing law states that successful completion of any diversion program or successful completion of an alcohol and drug problem assessment program shall not prohibit a board from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest. (BPC § 492)

Existing law establishes that the record of conviction of a crime shall be conclusive evidence of the fact that the conviction occurred for purposes of a board's decision to deny an application for a license or suspend or revoke a current license, except a board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. (BPC § 493)

This bill specifies that "conviction" for purposes of board actions means a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt.

This bill narrows a board's discretion to deny a professional license to the following cases:

- a) The applicant has been convicted of a crime; limits denials based on a criminal conviction to convictions for which the applicant is presently incarcerated or that occurred within the preceding seven years, except for convictions of a serious felony.
- b) The applicant has been subjected to formal discipline by a licensing board within the preceding seven years based on professional misconduct that would have been cause for discipline before the board for which the present application is made.

This bill requires that any criminal conviction or formal discipline be substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made in order to be the cause for denial of an application.

This bill removes the authority for a board to deny an application for licensure based on "acts" for which there has been no due process in a criminal or disciplinary proceeding.

This bill specifies that a person shall not be denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed.

This bill prohibits a board from denying a license on the basis of an arrest that resulted in a disposition other than a conviction.

This bill states that a board shall not deny a license based solely on an applicant's failure to disclose a fact that would not have been cause for denial of the license had it been disclosed.

This bill requires that a board follow the following procedures in requesting or acting on an applicant's criminal history information:

- a) A board shall not require an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history.
- b) If a board decides to deny an application based solely or in part on the applicant's conviction history, the board shall notify the applicant in writing of the denial of the application as well as the applicant's right to challenge or appeal the board's decision, as well as the process by which the applicant may secure a copy of their own rap sheet.

This bill requires boards to retain application forms and other documents submitted by an applicant, any notice provided to an applicant, all other communications received from and provided to an applicant, and criminal history reports of an applicant for a minimum of three years.

This bill requires boards to retain the following statistical information:

- a) The number of applicants with a criminal record who received notice of denial or disqualification of licensure.
- b) The number of applicants with a criminal record who provided evidence of mitigation or rehabilitation.
- c) The number of applicants with a criminal record who appealed any denial or disqualification of licensure.
- d) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant.

This bill requires boards to annually make available to the public through the board's website and through a report submitted to the Legislature deidentified information collected that ensures confidentiality of the individual applicants.

This bill requires each board to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession a board regulates, including the following:

- a) The nature and gravity of the offense.
- b) The number of years elapsed since the date of the offense.
- c) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

This bill requires each board to post on its website a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates.

This bill requires a board to consider that an applicant or licensee has made a showing of rehabilitation if any of the following are met:

- a) The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.
- b) The applicant or licensee documents that he or she has worked in a related field continuously for at least one year prior to licensure or successfully completed a course of training in a related field, unless the board finds a public record of an official finding that the applicant committed professional misconduct in the course of that work, including work performed without compensation and work performed while incarcerated.
- c) The applicant or licensee has satisfied criteria for rehabilitation developed by the board.

COMMENTS

1. Need for This Bill

According to the author:

In California, nearly 8 million people – approximately 1 in 3 adults – have arrest or conviction records. California has the highest recidivism rates in the nation, with many low-level criminal offenders committing new crimes within a year of release. These factors play a huge role in the prison and jail overcrowding crisis that the Legislature spent the past decade attempting to address.

One of the reasons for high rates of recidivism is an inability of prior offenders to secure gainful employment upon reentry. Like all Californians, access to secure employment is critical for these 8 million individuals with a prior conviction to support their families and communities.

California has already adopted robust policies that break down barriers for previously incarcerated individuals to access jobs in the private sector, including “ban the box” policies. Nevertheless, there continue to be barriers to employment for Californians with prior convictions.

Nearly 30 percent of California jobs require licensing, certification or clearance by an oversight board or agency for approximately 1,773 different occupations.

All too often, qualified people can be denied licensure or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed.

Even ex-offenders who received job-specific training while incarcerated can be kept out of those very occupations by licensing barriers. For example, the CA Dept of Corrections offers over 20 career & technical education programs to prisoners, but ironically, most of these programs relate to professions that require a license - like construction, cosmetology or automotive repair.

Currently, a licensing board may deny a license based on prior misconduct and each board individually determines what offenses are “substantially related” to the license sought. Many reports on California’s occupational regulation have pointed out that this licensing process lacks transparency, consistency, and due process for applicants.

Additionally, AB 2138’s sponsors have seen a chilling effect with prior nonviolent offenders who do not apply for licenses because there is a presumption they will be denied. This bill codifies a policy that we’ve seen in other criminal justice reforms in California that nonviolent offenders who have not reoffended within a number of years should be considered rehabilitated.

AB 2138 proposes to establish a transparent licensing process that gives these Californians a fair chance, as is the case in a number of other states, by prohibiting the denial of a license on the basis of a non-violent conviction older than 7 years (or a dismissed conviction or a non-conviction act) unless it is substantially related to the duties of the profession for which the application is made - for all licenses under the Department of Consumer Affairs, which regulates over 40 major professions.

It is in the interest of public safety to assist in the rehabilitation of criminal offenders by removing impediments and restrictions upon their ability to obtain employment.

2. DCA Entities and Licensure

The DCA notes in its *Who We Are and What We Do* booklet that California’s commitment to protecting consumers began with the passage of the Medical Practice Act of 1876, which was designed to regulate the state’s medical professionals who had operated virtually unchecked. Additional professions and vocations were brought under state authority over the following 30 years so that by the late 1920s, the Department of Vocational and Professional Standards was responsible for licensing or certifying accountants, architects, barbers, cosmetologists, dentists, embalmers, optometrists, pharmacists, physicians, and veterinarians. The Consumer Affairs Act was passed in 1970, giving the DCA its current name. Today, DCA issues almost 3 million licenses, certificates, and approvals to individuals and businesses in over 250 categories. This involves setting the qualifications and levels of competency for the professionals regulated by the Department’s boards and bureaus which license, register, or certify practitioners; investigate complaints; and discipline violators.

Within the DCA are 38 entities, including 26 boards, eight bureaus, two committees, one program, and one commission (hereafter “boards” unless otherwise noted). Collectively, these boards regulate more than 100 types of businesses and 200 different industries and professions. As regulators, these boards perform two primary functions: Licensing—which entails ensuring only those who meet minimum standards are issued a license to practice, and Enforcement—which entails investigation of alleged violations of laws and/or regulations and taking disciplinary action, when appropriate.

DCA entities are semiautonomous regulatory bodies with the authority to set their own priorities and policies and take disciplinary action on their licensees. Due to the unique nature of each individual profession licensed and regulated by entities under the DCA, the various professional practice acts contain their own standards and enforcement criteria for individuals applying for, or in receipt of, licensure. Boards adhere to general BPC provisions outlining discretion in determining how prior criminal history may be grounds for licensure denial. For example, BPC § 480 governs the authority of regulatory boards to deny applicants for licensure. Under BPC § 480, a board may deny a license within the purview of the DCA on the grounds that the applicant has one of the following:

- Been convicted of a crime; boards may disqualify based on criminal history if the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence.
- Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
- Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

This section of law also specifies that a license may only be denied for prior misconduct if the disqualifying crime or act is *substantially* related to the qualifications, functions, or duties of the business or profession for which application is made. The statute also states that a person may not be denied a license solely based on a conviction if he or she possesses a certificate of rehabilitation. Statute further clarifies that a dismissed conviction may not be grounds for disqualification for licensure.

These provisions are echoed in BPC § 490, which deals with the discretion of a board to take disciplinary action against a current licensee for subsequent criminal activity. This code section makes specific reference to *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, a court decision dealing with licensees convicted of criminal misconduct. The Legislature has found and declared the holding in that case has “placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes.” The Legislature therefore further found and declared that “this section establishes an independent basis for a board to impose discipline upon a licensee.”

3. Limits on Denial of License for Convictions

This bill would limit the authority of a Board to deny, suspend or revoke a license on the grounds that an applicant is currently incarcerated or has been convicted of an offense within the last seven years, except for serious felonies. The bill would require that the crime be substantially related to the qualifications, functions or duties of the job.

Seven years since conviction could mean that the person was incarcerated for a significant period of that time. Is that what it is intended? If not, the Committee may wish to consider whether the requirement should instead read seven years from conviction, incarceration or release from probation or parole.

The seven year limit will not apply to crimes that are serious felonies. Are there other offenses that a person licensed by a Board under the Department of Consumer Affairs should be considered beyond the seven years? For example should the Board of Accountancy be permitted to consider a conviction for embezzlement that is over 7 years old? Should the Board of Pharmacy be permitted to look at a drug conviction or insurance fraud conviction that is over 7 years old? Are there other convictions that are unique to specific boards that should they should be able to consider beyond the 7 year deadline?

4. Prohibits a Board from Requesting Information Regarding a Criminal History

This bill prohibits a board from requesting information from the applicant regarding his or her criminal history. If the Board is going to grant a license even with a criminal conviction, wouldn't the Board need information on the conviction? Wouldn't it be better for the applicant to submit the court information with an explanation about any of the circumstances instead of having the Board get the information itself? Would failure to have easy access to this information result in more denials of licenses based on the criminal conviction without further research?

5. Argument in Support

The Alliance for Boys and Men of Color support the bill stating:

The Alliance for Boys and Men of Color is a coalition of youth, community, public system leaders, and policy researchers and advocates that are working to ensure our most vulnerable youth and young adults get the tools and supports needed to develop into healthy, successful adults who can contribute to California's social and economic vitality. Working at the state and local level, the Alliance is actively pursuing reforms that will increase access to health services, improve academic success, support neighborhood safety, reduce justice system involvement, and support employment opportunities for this vulnerable population.

California has nearly 8 million people who have been impacted by the justice system and have had previous convictions, many of whom, are disproportionately young men of color. Most formerly incarcerated people struggle to find permanent and stable employment after contact with the justice system. Data has shown that employment is the single most important factor to reducing recidivism. Across the nation, almost 30 percent of jobs require occupational licensing. In California, applicants who seek an occupational license that is governed under the umbrella of the Department of Consumer Affairs must be cleared by an oversight board.

Currently, the Department of Consumer Affairs has overly restrictive policies that deny qualified people occupational licenses and allow for revocation or suspension of licenses because of prior arrests or convictions that are not directly and adversely related to the job. Further, many individuals are denied occupational licenses on the bases of judicially dismissed convictions. Even applicants who gained job-specific training while incarcerated are still barred from working in their occupational field due to licensing barriers.

6. Argument in Opposition

According to the Board for Professional, Engineers, Land Surveyors, and Geologists opposes this bill stating:

The Board [Board for Profession Engineers, Land Surveyors and Geologists] is mandated by Business and Professions Code Sections ... to give the highest priority in all decisions to the protection of the public; these laws state "...whenever protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The provisions of AB 2138 that would prohibit the Board from considering all criminal convictions of applicants and licensees in determining whether to deny the issuance of a license or to seek disciplinary action against a licensee and from inquiring of the applicants and licensees directly regarding any convictions places the interests of the applicants and licensees ahead of those to the public, in direct contradiction to the clear intent of the Legislature when it enacted these sections. Furthermore, the removal of the Board's ability to consider acts by applicants that do not lead to convictions also places the interests of the individual applicants above the protection of the public as a whole.

Prohibiting the Board from requiring that the applicant provide information, such as court documents, regarding the conviction, would cause the Board to have to expend additional resources, including court fees and staff time, to obtain the documents directly. In addition to increasing the Board's workload and costs, it would also delay the processing of applications and the issuing of licenses. Additionally, prohibiting the Board from considering convictions relating to non-violent crimes that are over five years old would exclude many crimes that are not only substantially related but also "directly and adversely" related, to professions the Board regulates such as fraud, embezzlement, diversion of public funds and submittal of false or forged documents to public agencies.

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