AGENDA ITEM 5(d) – AB 2138

AB 2138 (CHIU AND LOW), Licensing boards: denial of application.

Assembly Bill 2138 (Chiu & Low)
Reducing Barriers to Occupational Licensing

SUMMARY

Reduces barriers to entry in occupational licensure for individuals with a prior conviction applying for licensure through the Department of Consumer Affairs (DCA).

BACKGROUND

In California, an estimated 7,955,500 people – approximately 1 in 3 adults – have arrest or conviction records. California has among 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 significant role in the prison and jail overcrowding crisis that the Legislature has spent the past decade attempting to address.

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

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

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

All too often, qualified people are denied occupational licenses 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 individuals who receive job-specific training while incarcerated are kept out of these occupations by licensing barriers.

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.

THE SOLUTION

Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.

AB 2138 will increase access to licensure by applying reforms to the Department of Consumer Affairs (DCA).

Specifically, AB 2138:

- Prohibits denial or revocation/suspension of a license on the basis of a non-violent conviction older than 5 years, a conviction that has been dismissed, or a non-conviction "act" unless it is directly related to the qualifications, functions, or duties of the business or profession for which application is made.
- Prohibits boards from requiring an applicant to self-disclose criminal history information that can already be obtained through DOJ background checks.
- Requires boards to collect and publish demographic data regarding applicants who are denied licensure or who have licenses revoked/suspended.

California must continue to increase public safety and economic prosperity for all Californians by adopting policies that reduce barriers to economic opportunity for formerly incarcerated individuals.

SUPPORT

All of Us or None
Anchor of Hope Ministries
Anti-Recidivism Coalition
Because Black is Still Beautiful
Californians for Prop 57
Californians for Safety and Justice
Center for Employment Opportunities (CEO)
Center for Living and Learning
Checkr
East Bay Community Law Center
Legal Services for Prisoners with Children
Los Angeles Regional Reentry Partnership (LARRP)
National Association of Social Workers - California Chapter
Prisoner Reentry Network

Project Rebound: Expanded
REDF (Roberts Enterprise Development Fund)
Rise Together Bay Area
Root & Rebound
San Jose State University Record Clearance Project
The Young Women's Freedom Center

OPPOSITION

None on file

FOR MORE INFORMATION

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AB-2138 Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction. (2017-2018)

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AMENDED IN ASSEMBLY APRIL 02, 2018

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL No. 2138

Introduced by Assembly Members Chiu and Low

February 12, 2018

An act to amend ~~Sections 480 and~~ *Sections 7.5, 480, 481, 482, 488, 490, 492, 493, 1005, and* 11345.2 ~~of~~ *of, to add Section 481.5 to, and to repeal Section 490.5 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 and~~ *Affairs. Existing law* authorizes a board to ~~deny~~ *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 ~~instead prohibit a person from being denied a license solely on the basis that he or she has been convicted of a nonviolent crime and would make conforming changes.~~ *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 years, except for violent felonies, and would require the crime to be directly and adversely 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 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 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 a board to suspend a license if a licensee is not in compliance with a child support order or judgment.

This bill would repeal that authorization.

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 after a specified hearing requested by an applicant for licensure to take various actions, including imposing probationary conditions on the license.

This bill would additionally authorize a board to grant the license and immediately issue a public reproval. 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.

This bill would also make necessary conforming changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. *Section 7.5 of the Business and Professions Code is amended to read:*

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.~~ *contendere or finding of guilt.* 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.

~~Nothing~~

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

(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 1.**~~***SEC.* 2.** Section 480 of the Business and Professions Code is amended to read:

480. (a) ~~A~~ *(1) 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 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 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 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.~~

(A) The applicant has been convicted of a crime for which the applicant is presently incarcerated or for which the conviction occurred within the preceding five years. However, the preceding five year limitation shall not apply to a conviction for a violent felony, as defined in Section 667.5 of the Penal Code.

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

(B) 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 directly and adversely 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 five 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.

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

(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~~ nonviolent crime.~~ *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, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation pursuant to Section 482.*

(c) Notwithstanding any other provision of this code, 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 pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal 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, or 1203.42 of the Penal Code shall provide proof of the 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.

~~(c)~~

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

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

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~~ *is directly and adversely* related to the qualifications, functions, or duties of the business or profession it regulates.

(b) 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 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 directly and adversely related to the qualifications, functions, or duties of the business or profession it regulates consistent with this section.

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

481.5. *(a) Probationary terms or restrictions placed on a license by a board shall be limited to two years or less. Any additional conditions may 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.*

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

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

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

SEC. 5. *Section 482 of the Business and Professions Code is amended to read:*

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.

~~Each~~

(b) Each board shall ~~take into account all competent evidence of rehabilitation furnished by the applicant or licensee.~~ *find that an applicant or licensee has made a showing of rehabilitation if any 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) (A) 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.

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

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

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

SEC. 6. *Section 488 of the Business and Professions Code is amended to read:*

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, *grant the license and immediately issue a public reproval pursuant to Section 495,* immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.

(c) Deny the license.

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

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

490. (a) *(1)* In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a 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.~~ *crime for which the applicant is presently incarcerated or for which the conviction occurred within the preceding five years. However, the preceding five year limitation shall not apply to a conviction for a violent felony, as defined in Section 667.5 of the Penal Code.*

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

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

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

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

~~(c)A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An 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 Section 1203.4 of the Penal Code.~~

~~(d)The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that 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. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.~~

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

(d) Notwithstanding any other provision of this code, a board shall not suspend or revoke 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 juvenile adjudication.

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

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

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

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

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

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

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

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

(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 the confidentiality of the individual licensees.

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

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

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

SEC. 8. *Section 490.5 of the Business and Professions Code is repealed.*

~~490.5.A board may suspend a license pursuant to Section 17520 of the Family Code if a licensee is not in compliance with a child support order or judgment.~~

SEC. 9. *Section 492 of the Business and Professions Code is amended to read:*

492. *(a)* Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, *successful completion by a licensee or applicant of any nonstatutory diversion program, deferred entry of judgment,* or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall ~~not~~ prohibit any ~~agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division,~~ *board* from taking disciplinary action against a licensee or from denying a license for professional ~~misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.~~ *misconduct.*

~~This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.~~

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

SEC. 10. *Section 493 of the Business and Professions Code is amended to read:*

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~~ *directly and adversely* 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 directly and adversely 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.

~~As~~

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

SEC. 11. *Section 1005 of the Business and Professions Code is amended to read:*

1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35, 104, 114, 115, 119, 121, 121.5, 125, 125.6, 136, 137, 140, 141, 143, 163.5, 461, 462, 475, 480, 484, 485, 487, 489, 490, ~~490.5,~~ 491, 494, 495, 496, 498, 499, 510, 511, 512, 701, 702, 703, 704, 710, 716, 730.5, 731, and 851 are applicable to persons licensed by the State Board of Chiropractic Examiners under the Chiropractic Act.

~~**SEC. 2.**~~***SEC. 12.*** Section 11345.2 of the Business and Professions Code is amended to read:

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. 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.

Date of Hearing: April 24, 2018

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Evan Low, Chair
AB 2138 (Chiu) – As Amended April 2, 2018

SUBJECT: Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction.

SUMMARY: Reduces barriers to professional licensure for individuals with prior criminal convictions by limiting a regulatory board's discretion to deny a new license application, or suspend or revoke an existing license, to cases where the applicant or licensee was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than five years no longer eligible for license denial or suspension or revocation with the exception of violent felonies, as currently established in statute.

EXISTING LAW:

1) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)

2) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA's jurisdiction. (BPC § 101)

3) Defines "board" as also inclusive of "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (BPC § 22)

4) 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)

5) 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)

6) 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.*)

7) 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.*)

8) 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.*)

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

10) 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.*)

11) 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)

12) 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)

13) 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)

14) 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)

15) 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)

16) 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:

1) 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.

2) 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 five years, except for convictions of a violent felony.

b) 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.

3) Requires that any criminal conviction or formal discipline be directly and adversely 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.

4) 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.

5) 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.

6) Prohibits a board from denying a license on the basis of an arrest that resulted in a disposition other than a conviction.

7) 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.

8) 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.

9) 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.

10) 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.

11) 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.

12) Expressly supersedes any contradictory provision in a licensing act that authorizes license denial based on a criminal conviction, arrest, or underlying acts.

13) 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.

14) Requires each board to post on its website a summary of the criteria used to consider whether a crime is considered to be directly and adversely related to the qualifications, functions, or duties of the business or profession it regulates.

15) Requires a board to consider evidence of rehabilitation prior to denying or suspending or revoking a license based in whole or in part on a conviction.

16) Limits probationary terms or restrictions placed on a license by a board to two years or less unless 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, per criteria developed by each board.

17) Requires a board to find 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.

18) In addition to other causes for discipline, narrows a board's discretion to revoke or suspend a professional license for criminal misconduct to cases where the licensee is presently incarcerated or the conviction occurred within the preceding five years, except for convictions of a violent felony, and the crime committed was directly and adversely related to the qualifications, functions, or duties of the business or profession.

19) Requires that any criminal conviction or formal discipline be directly and adversely 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 suspension or revocation of a license.

20) Specifies that a person shall not have his or her license suspended or revoked on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed.

21) Requires that a board follow the following procedures in requesting or taking disciplinary action based on an applicant's criminal history information:

    a) A board shall not require a licensee to disclose any information or documentation regarding the licensee's criminal history.

    b) If a board decides to revoke or suspend a professional license solely or in part on the licensee's conviction history, the board shall notify the licensee in writing of the processes for the licensee to request a copy of the licensee's complete conviction history and question the accuracy or completeness of his or her criminal record.

22) Requires boards to retain all documents submitted by a licensee, notices provided to a licensee, all other communications received from or provided to a licensee, and criminal history reports of a licensee for a minimum of three years.

23) Requires boards to retain all of the following information:

    a) The number of licensees with a criminal record who received notice of potential revocation or suspension of their license or who had their license suspended or revoked.

    b) The number of licensees with a criminal record who provided evidence of mitigation or rehabilitation.

    c) The number of licensees with a criminal record who appealed any suspension or revocation of a license.

    d) The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant.

24) Requires each board to annually make available to the public through the board's website and through a report submitted to the Legislature deidentified information, ensuring the confidentiality of the individual licensees.

25) Expressly supersedes any contradictory provision in a licensing act that authorizes license suspension or revocation based on a criminal conviction, arrest, or underlying acts.

26) States that limitations on suspending or revoking a license based on criminal convictions shall not prohibit a board from taking disciplinary action against a licensee for professional misconduct in the course and scope of the licensee's profession that is based on evidence that is independent of an arrest.

27) Repeals the authority of a board to suspend a license if a licensee is not in compliance with a child support order or judgment.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by a coalition of criminal justice advocacy groups including the East Bay Community Law Center, Anti-Recidivism Coalition, Legal Services for Prisoners with Children, and Root & Rebound. According to the author:

> California has among 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 significant role in the prison and jail overcrowding crisis that the Legislature has spent the past decade attempting to address. One of the root causes of high recidivism rates is the inability of prior offenders to secure gainful employment upon reentry. Nearly 30 percent of California jobs require licensure, certification, or clearance by an oversight board or agency for approximately 1,773 different occupations. All too often, qualified people are denied occupational licenses 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. Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.

Background.

Overview of Licensure in California. California has provided for the licensure of regulated professionals since the early days of statehood. In 1876, the Legislature enacted the original Medical Practice Act, which was revised two years later to delegate licensing authority to the first three regulatory boards: the Medical Board, Eclectic Board, and Homeopathic Board. By the end of the 1920s, seven additional boards had been established to regulate pharmacists, dentists, optometrists, veterinarians, barbers, accountants, and embalmers. These boards were placed under the oversight of a Department of Vocational and Professional Standards, which would become the Department of Consumer Affairs in 1965. Today, the DCA oversees 38 boards, bureaus, and other regulatory bodies.

As a department within an agency of the state government, the DCA is led by a director appointed by the Governor. While the regulatory boards under the DCA's oversight are considered semi-autonomous, the Director of Consumer Affairs does wield considerable influence over board policymaking. For example, the director has the power to review and disapprove formal rulemaking, may conduct audits and reviews of board activities, and approves budget change proposals prior to their submission to the Department of Finance. The powers of the director are then further subject to the authority of the Secretary of the Business, Consumer Services, and Housing Agency and, ultimately, the Governor.

The practice act for each profession licensed by a regulatory board under the DCA typically includes sunset provisions providing for regular review by the Legislature. At staggered intervals averaging four years, the Senate and Assembly Business and Professions Committees prepare a comprehensive background paper for each entity, hold public hearings, recalculate the balance of consumer protection and regulatory burden, and make recommendations to enact any necessary reforms. In rare instances, entities are abolished, reduced, or consolidated when inefficiencies are identified or when public benefit is deemed insufficient to justify regulation. For example, in 2017 the Legislature allowed the State Board of Guide Dogs for the Blind to sunset, replacing its licensing program with less intrusive title protections.

Board Discretion to Deny Applications for Licensure. 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 special occupational privileges from the state. There are some umbrella statutes that govern the discretion of these regulatory bodies generally. 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:

1) 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.

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) 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.

§ 480 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."

Criticism has been made over statute's allowance for boards and bureaus to deny a license to an individual who has "done any act involving honesty, fraud, or deceit" for self-benefit or harm to others. This broad discretion goes beyond criminal convictions, as well as non-criminal activity that is nevertheless afforded an element of due process, such as regulatory discipline. This authority has opened the door for many licensure applications to be denied based purely on alleged misconduct that has not been determined to have occurred through standard due process.

The discretion for boards and bureaus to deny licensure to applicants with criminal histories has also been criticized, despite the guarantee of due process afforded to these applicants prior to a crime being reflected on their record. In its report *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, the National Employment Law Project (NELP) discusses the arguably draconian nature of barriers to occupational entry based on criminal history. NELP's report refers to "a lack of transparency and predictability in the licensure decision-making process and confusion caused by a labyrinth of different restrictions" in regulatory schemes across the country.

California is specifically graded as "Needs Improvement," with recommendations including:

- Expand blanket ban prohibition to all occupations with one overarching law.
- Expand occupation-relatedness requirement to all.
- Require consideration of the time elapsed since conviction.
- Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses).
- Require consideration of the applicant's rehabilitation.

In 2017, the Assembly Business and Professions Committee discussed barriers to licensure generally in its sunset background paper for the DCA. Specifically, the committee considered how criminal convictions eligible for license disqualification in California are limited in the sense that they must be "substantially related" to the profession into which the license allows entry. Concern was expressed that there is a "serious lack of clarity for applicants as to what 'substantially related' means and this determination is often left to the discretion of individual boards." The committee staff recommendation was for the DCA to take steps to improve transparency and consistency in the use of applicants' criminal histories by boards and bureaus.

Recidivism Reduction Policies. California has among the highest recidivism rates in the country. At the height of the state's prison overcrowding crisis, the percentage of incarcerated individuals becoming convicted of new crimes and returned to prison was close to 70 percent. This troubling statistic and its detrimental effects on society, the economy, and public safety – in addition to a court decision in *Brown v. Plata* regarding the inhumanity of overcrowded prisons – led to a variety of anti-recidivism policies in localities and statewide. Many of these policies focused on expanding economic opportunity for those with criminal conviction histories, seeking to "close the revolving door" of prisons.

In 2012, the White House under President Barack Obama called for expanded policies encouraging successful reentry through post-incarceration employment. This included "ban the box" policies, referring to the deferment of disclosure of criminal history on initial applications for employment. These policies allow an applicant to proceed through a hiring process up until the final offer stage without their prior conviction being disclosed. The intent of this and other post-conviction reentry policies is to provide those convicted of crimes with economic opportunity following release, which in turn reduces criminal recidivism, improves public safety, and curbs over-incarceration. In 2013, AB 218 (Dickinson) was signed into law as California's first significant "ban the box" legislation. The bill prohibited a state or local agency from asking an applicant to disclose information regarding a criminal conviction until the agency has determined the applicant meets the minimum employment qualifications for the position. This legislation was followed in 2017 by AB 1008 (McCarty), which extended the law to include private employers.

This bill would similarly improve economic opportunity for those with criminal convictions by increasing access to professional licensure. The bill does not broaden the state's "ban the box" laws to professional licensure, and it does not replicate those laws enacted for employment by a public or private entity. Applicants for licensure are not competitively evaluated and chosen based on professional strengths. Applicants are presumed eligible if they meet certain qualifications and if there is nothing to disqualify them. An applicant's criminal history is disclosed at the time of the application and this bill would not exclude or delay its consideration.

However, because current law enables boards to disqualify based on crimes that are "substantially related" to the profession, applicants are often unaware of what misconduct will render them ineligible for licensure. Further, many applications for licensure require self-disclosure of prior misconduct from applicants; in instances where applicants underestimate the inclusivity of what crimes or acts will disqualify them, they may fail to voluntarily disclose that information. This lack of disclosure is in and of itself grounds to deny the application for licensure. The practice of requiring self-disclosure by applicants and then denying an application based on an applicant's inadequate self-incrimination is frequently regarded as the "candor trap."

Revocation or Suspension of Licenses. Each regulatory board under the DCA has broad authority to take disciplinary action against its licensees based on the provisions of its specific practice act and the standard of conduct for its licensee population. In addition to these board-by-board causes for discipline, BPC § 490 allows a board to suspend or revoke a license on the ground that a licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. While a number of disciplinary actions against licensees have been so-called "conviction cases" resulting directly from the result of parallel criminal proceedings, many stakeholders have been concerned that such cases are overly punitive and can frequently be cause for a licensee to be unable to practice his or her profession long after the criminal misconduct has occurred. This bill intends to make modest reforms to this process in addition to amendments to provisions governing the issuance of initial licensure applications.

Criminal Offenses Eligible for Consideration. This bill does not substantially change the authority of an individual board to determine what crimes may be considered when denying a licensure application or suspending or revoking a license. The bill does change the term "substantially related" to "directly and adversely related," clarifying that the relation should imply a greater proclivity for the individual to engage in misconduct while exercising their professional privileges. However, each board would still be authorized to develop its own specified standards for these purposes. The bill does mandate data collection and public reporting in regards to how criminal convictions are used to deny or revoke or suspend licenses. This information will guide policymakers in the event that more prescriptive reforms to what crimes are eligible for consideration are contemplated.

The bill institutes a five-year "washout period" for convictions. Under these provisions, crimes older than five years may no longer be considered for purposes of denying a licensure application or revoking or suspending a current license. However, this washout period does not apply to violent felonies, which are already codified under Penal Code § 667.5. The lengthy list of serious offenses listed under this section is cited as a way of ensuring that certain exceptions are made when generally downgrading the significance of an individual's conviction history.

Current Related Legislation. AB 3039 (Holden) would make similar reforms to the use of criminal history for licenses granted by the State Department of Social Services.

Prior Related Legislation. AB 1008 (McCarty, Chapter 789, Statutes of 2017) prohibited an employer from inquiring into or considering the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate information related to their rap sheet.

AB 2396 (Bonta, Chapter 737, Statutes of 2014) prohibited a board within the DCA from denying a license based solely on a conviction that has been dismissed.

AB 218 (Dickinson, Chapter 699, Statutes of 2013) prohibited from asking an applicant to disclose information regarding a criminal conviction until the agency has determined the applicant meets the minimum employment qualifications for the position.

ARGUMENTS IN SUPPORT:

An extensive coalition of criminal justice reform advocacy organizations supports the bill, along with labor organizations.

The East Bay Community Law Center (EBCLC), a co-sponsor of the bill, writes that "many formerly incarcerated people struggle to find permanent and stable employment after contact with the criminal 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." EBCLC states that "the increased ability to gain employment will reduce recidivism rates and will make our communities safer and more productive."

Another co-sponsor of the bill, the Anti-Recidivism Coalition (ARC), writes that it is "incumbent on the state of California to develop stronger and fairer pathways into licensed professions for formerly incarcerated people and people with arrest and conviction records, as it will reduce recidivism, improve public safety, and increase economic security for millions of Californians with criminal records, as well as the children and families they support." ARC states that "the increased ability to gain living wage employment will reduce recidivism rates and will make our communities safer and more prosperous."

San Francisco Public Defender Jeff Adachi writes in support. P.D. Adachi writes that "nearly 30 percent of California jobs require licensure, certification, or clearance for approximately 1,773 different occupations. However, qualified people, including individuals who receive job-specific training while incarcerated, are either denied occupational licenses or even have licenses suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed." P.D. Adachi states that "alleviating barriers to occupational licensing is just one way California can reduce recidivism, increase public safety, and provide economic opportunity to all its residents."

The Ella Baker Center for Human Rights (EBCHR) is in support of the bill. ECHBR writes that "a 2015 report by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design Who Pays, The True Cost of Incarceration on Families details how incarceration destabilizes entire families and communities. Many people who return from incarceration face extreme barriers to finding jobs and reintegrating into society. Research has shown that upwards of 60% of formerly incarcerated individuals cannot find employment one year after release."

ARGUMENTS IN OPPOSITION:

Pacific Advocacy Group, representing the Plumbing-Heating-Cooling Contractors Association of California; the Western Electrical Contractors Association; and the San Diego, Southern and Central California Chapters of Associated Builders and Contractors opposes the bill. These groups are all "merit shop employer associations" (or trade associations that deliberately do not participate in labor unions) that represent licensees under the Contractors State Licensing Board (CSLB). The groups have taken an "oppose unless amended" position, arguing that "the number of applicants denied licensure at CSLB because of a criminal conviction is very low." The groups state that CSLB should be "exempt from the changes in AB 2138."

POLICY ISSUE(S) FOR CONSIDERATION:

This bill currently institutes a five-year washout period for consideration of crimes other than violent felonies. Many other laws regarding the use of criminal history in licensure or employment contexts currently feature a washout period of seven years. To make the provisions of this bill consistent with other areas of law, it may be advisable to extend the bill's washout period to seven years.

REGISTERED SUPPORT:

Anti-Recidivism Coalition (Sponsor)
East Bay Community Law Center (Sponsor)
Legal Services for Prisoners with Children (Sponsor)
Root & Rebound (Sponsor)
American Civil Liberties Union (ACLU)
American Federation of State, County and Municipal Employees (AFSCME)
Alameda County Public Defender
All of Us or None
Alliance for Boys and Men of Color
Anchor of Hope Ministries
Bay Area Legal Aid
Bayview Hunters Point Foundation
Because Black is Still Beautiful
California Immigrant Policy Center
Californians for Prop 57
Californians for Safety and Justice
California Workforce Organization
Center for Employment Opportunities
Center on Juvenile and Criminal Justice
Center for Living and Learning
Checkr
Courage Campaign
Downtown Women's Center
Ella Baker Center for Human Rights
Hillview Mental Health Center
Homeboy Industries
Hunters Point Family
Lawyer's Committee for Civil Rights
Leadership for Urban Renewal Network
Legal Services of Northern California
Leonard Carter
Los Angeles Regional Reentry Partnership (LARRP)
National Association of Social Workers - California Chapter
National Employment Law Project
New Door Ventures
Oakland Private Industry Council
Planting Justice
Prisoner Reentry Network
Project Rebound: Expanded

REDF (Roberts Enterprise Development Fund)
Rise Together Bay Area
Rubicon Programs
San Francisco Adult Probation Department
San Francisco Conservation Corps
San Francisco Public Defender Jeff Adachi
San Francisco State University Project Rebound
San Jose State University Record Clearance Project
The Rock Found
The Young Women's Freedom Center
Three Individuals

REGISTERED OPPOSITION:

Plumbing-Heating-Cooling Contractors Association of California
Western Electrical Contractors Association
San Diego, Southern and Central California Chapters of Associated Builders and Contractors

Analysis Prepared by: Robert Sumner / B. & P. / (916) 319-3301

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 2138
Author:	Chiu and Low
Bill Date:	April 2, 2018, Amended
Subject:	Licensing boards: denial of application: revocation or suspension of licensure: criminal conviction
Sponsor:	Anti-Recidivism Coalition; East Bay Community Law Center; Legal Services for Prisoners with Children; and Root & Rebound

DESCRIPTION OF CURRENT LEGISLATION:

This bill would prohibit denial or revocation and suspension of a license for specified convictions. This bill would prohibit regulatory boards from requiring an applicant to self-disclose criminal history information. This bill would require boards to collect and publish demographic data regarding applicants who are denied licensure or who have licenses revoked or suspended, among other provisions.

ANALYSIS

This bill would, among other things, significantly limit the Medical Board of California's (Board) ability to ask about an applicant's or licensee's criminal history, and would restrict the Board's ability to deny a license or take disciplinary action against a licensee for criminal convictions.

This bill would amend the definition of a conviction in the Business and Professions Code to mean a judgment following a plea or verdict of guilty or a plea of nolo contendere or finding of guilt. This bill would no longer allow a conviction that has been dismissed under Penal Code Section 1203.4 to fall under the definition of a conviction.

This bill would allow a board to deny a license on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if any of the following conditions are met:

- The applicant has been convicted of a crime for which the applicant is presently incarcerated or for a conviction occurring within the preceding five years. However, the preceding five year limitation would not apply to a conviction for a violent felony.
- The crime is directly and adversely related to the qualification, functions, or duties of the business or profession for which the application is made.
- The applicant has been subjected to formal discipline by a 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 directly and adversely 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 board within the preceding five 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 the Penal Code, or a comparable dismissal or expungement.

This bill would specify that denial of a license includes denial of an unrestricted license by issuance of a restricted or probationary license.

This bill would allow a board to suspend or revoke a license on the ground that the licensee has been convicted of a crime for which the applicant is presently incarcerated or for a conviction occurring within the preceding five years. However, the preceding five year limitation shall not apply to a conviction for a violent felony. This bill would allow a board to suspend or revoke a license only if the crime is directly and adversely related to the qualifications, functions, or duties of the business or profession for which application is made.

This bill would prohibit a board from denying a license on the basis that an applicant has been convicted of a crime, or on the basis of the acts underlying a conviction for a crime, if the applicant has obtained a certificate of rehabilitation under the Penal Code, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation. This bill prohibits a board from denying a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to the Penal Code, or a comparable dismissal or expungement. This bill would prohibit a board from denying 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. 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 it been disclosed.

This bill would specify that a board can only discipline a licensee for conviction of a crime if the crime is directly and adversely related to the qualifications, functions, or duties of the business and profession for which the license was issued, and if the licensee was convicted of the crime within the preceding five years or is presently incarcerated for the crime. This bill would specify that the preceding five year limitation does not apply to a conviction for a violent felony. This bill would prohibit a board from suspending or revoking a license on the basis of a conviction, or the acts underlying a conviction, where that conviction has been dismissed pursuant to the Penal Code or a comparable dismissal or expungement. This bill would prohibit a board from suspending or revoking 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 juvenile adjudication.

This bill would specify that the provisions in this bill do not prohibit any agency from taking disciplinary action against a licensee for professional misconduct in the course and scope of the licensee's profession that is based on evidence that is independent of an arrest.

This bill would prohibit any board from taking disciplinary action against a licensee or from denying a license for professional misconduct if the applicant or licensee successfully completes any diversion program under the Penal Code, successfully

completes any non-statutory diversion program or entry of judgment, or successfully completes an alcohol and drug problem assessment program.

This bill would require a board to adhere to the following procedures in requesting or acting on an applicant's or licensee's criminal history information:

- A board must not require an applicant for licensure or licensee to disclose any information or documentation regarding the applicant's criminal history.
- 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:
    - The denial or disqualification of licensure.
    - Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.
    - That the applicant has the right to appeal the board's decision.
    - 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 the Penal Code.
- If a board chooses to file an accusation against a licensee based solely or in part on the licensee's conviction history a board shall notify the licensee in writing of the processes for the licensee to request a copy of the licensee's complete conviction history and question the accuracy or completeness of his or her criminal record, pursuant to the Penal Code.

This bill would require each board to retain, for a minimum of three years, application forms and other documents submitted by an applicant or licensee, any notice provided to an applicant or licensee, all other communications received from and provided to an applicant or licensee, and criminal history reports of applicants or licensees. This bill would require each board to retain the number of applications received for each license and the number of applications requiring inquiries regarding criminal history. This bill would require each board to retain all of the following information:

- The number of applicants with a criminal record who received notice of denial or disqualification of licensure and the number of licensees with a criminal record who received notice of potential revocation or suspension of their license or who had their license revoked
- The number of applicants and licensees with a criminal record who provided evidence of mitigation or rehabilitation.
- The number of applicants with a criminal record who appealed any denial or disqualification of licensure and the number of licensees with a criminal record who appealed any suspension or revocation of a license.
- The final disposition and demographic information, including, but not limited to, voluntarily provided information on race or gender, of any applicant or licensee described in the above bullets.

This bill would require each board to annually make the required reporting information available to the public through the board's internet website and through a report submitted to the appropriate policy committees of the Legislature, de-identified information collected. This bill would require each board to ensure confidentiality of the individual applicants.

This bill would require each board to develop criteria to aid it, when considering the denial, suspension, or revocation of a license, to determine whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession it regulates.

This bill would require the 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 to include all of the following:

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

This bill would require each board to post on its Internet Web site a summary of the criteria used to consider whether a crime is considered to be directly and adversely related to the qualifications, functions, or duties of the business or profession it regulates.

This bill would require probationary terms or restrictions placed on a license by a board to be limited to two years or less. This bill would only allow additional conditions to be imposed 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. This bill would require each board to develop criteria to aid it when considering the imposition of probationary conditions or restrictions to determine what conditions may be imposed to address a risk shown by clear and convincing evidence.

This bill would allow a licensee whose license has been placed on probation to petition the board for a change to the probation, including modification or termination of probation, one year from the effective date of the decision. This bill would require the board to issue its decision on the petition within 90 days of submission of the petition. This bill would specify that the petition shall be deemed granted by operation of law if the board does not file a decision denying the petition within 90 days of submission of the petition. This bill would specify that the one-year time period to petition for modification or termination of penalty shall control over longer time periods under a licensing act under this code or initiative act.

This bill would prohibit a board from denying a license based in whole or in part on a conviction without considering evidence of rehabilitation.

This bill would require each board to find that an applicant or licensee has made a showing of rehabilitation if any of the following are met:

- The applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation.
- 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. Work in a related field may include, but is not limited to, work performed without compensation and work performed while incarcerated. "Related field" means a field of employment whose duties are substantially similar to the field regulated by the board.

- The applicant or licensee has satisfied criteria for rehabilitation developed by the board.

The author's office believes this bill will reduce barriers to entry in occupational licensure for individuals with prior convictions, which the author believes will reduce recidivism and provide economic opportunity to Californians.

This bill would significantly narrow the authority of the Board to deny a license and take disciplinary action for criminal convictions and actions taken by other licensing boards, even for crimes involving sexual misconduct, fraud, and alcohol or substance abuse. This bill would not allow the Board to deny a license on the basis of the acts underlying a conviction. This bill would define denial to also include a probationary license. This bill would allow applicants to lie on their application and not be met with any consequences, as the Board would no longer be able to issue a probationary license based on the applicant not disclosing information. The bill would limit the length of probation that the Board can require for a probationary license to two years, which is less than the Board typically imposes for unprofessional conduct. Moreover, this bill is unnecessary, because the Board already complies with the Administrative Procedures Act. Applicants and licensees have the right to have their matters heard through the administrative process, and then to appeal to a superior court if they disagree with the Board's decisions.

This bill would result in significant fiscal impact to the Board for the record retention and reporting requirements and the timeframes to process a petitions for termination/modification of probation. This bill would significantly narrow the Board's ability to deny licenses, issue probationary licenses, and take disciplinary action for convictions. This bill is not in line with the Board's mission of consumer protection and Board staff suggests the Board take an oppose position on this bill.

FISCAL: Board staff estimates it will need one half-time office technician position to ensure the Board is meeting the record retention requirements. The Board would also need a .25 Information Technology Specialist I to create and run the annual report required by this bill. This is estimated at a cost of $61,000 per year for both positions. This bill will also result in costs related to the provision in this bill that would allow a licensee whose license has been placed on probation to petition the board for a change to the probation, including modification or termination of probation, one year from the effective date of the decision. This bill would require the board to issue its decision on the petition within 90 days of submission of the petition. This would result in significant costs to the Board to get this petition through the process of Board approval in 90 days. This means that the petitions would have to be reviewed by Board staff, the Board, the

Attorney General's Office (AG) and heard by an Administrative Law Judge in this time period. Board staff estimates the fiscal impact of this provision to be approximately $750,000 for more Board staff for this increased workload, AG costs, and Office of Administrative Hearing costs.

SUPPORT: Anti-Recidivism Coalition (Sponsor); East Bay Community Law Center (Sponsor); Legal Services for Prisoners With Children (Sponsor); Root & Rebound (Sponsor); All of Us or None; Anchor of Hope Ministries; Because Black is Still Beautiful; Californians for Prop 57; Californians for Safety and Justice; Center for Employment Opportunities; Center for Living and Learning; Checkr; Los Angeles Regional Reentry Partnership; National Association of Social Workers – California Chapter; Prisoner Reentry Network; Project Rebound: Expanded; Roberts Enterprise Development Fund; Rise Together Bay Area; San Jose State University Record Clearance Project; and The Young Women's Freedom Center

OPPOSITION: None on file

POSITION: Recommendation: Oppose

MEDICAL BOARD OF CALIFORNIA
Executive Office

April 30, 2018

The Honorable David S. Chiu
California State Assembly
State Capitol, Room 4112
Sacramento, CA 95814

The Honorable Evan Low
California State Assembly
State Capitol, Room 4126
Sacramento, CA 95814

Re.: AB 2138 (Chiu and Low) – Oppose Position

Dear Assembly Members Chiu and Low:

The Medical Board of California (Board) considered your AB 2138 at its meeting on April 19, 2018. The Board took an oppose position on this bill. This bill would prohibit denial or revocation and suspension of a license for specified convictions. This bill would prohibit regulatory boards from requiring an applicant to self-disclose criminal history information. This bill would require boards to collect and publish demographic data regarding applicants who are denied licensure or who have licenses revoked or suspended, among other provisions.

This bill would significantly narrow the authority of the Board to deny a license and take disciplinary action for criminal convictions and actions taken by other licensing boards, even for crimes involving sexual misconduct, fraud, and alcohol or substance abuse. This bill would not allow the Board to deny a license on the basis of the acts underlying a conviction. This bill would define denial to also include a probationary license. The bill would limit the length of probation that the Board can require for a probationary license to two years, which is less than the Board typically imposes for unprofessional conduct. This bill would result in significant fiscal impact to the Board for the record retention and reporting requirements and the timeframes to process a petitions for termination/modification of probation. This bill would significantly narrow the Board's ability to deny licenses, issue probationary licenses, and take disciplinary action for convictions. For these reasons, the Board respectfully opposes this bill.

Please contact my Chief of Legislation, Jennifer Simoes, or me at (916) 263-2389 if you need additional information regarding our position on this bill.

Sincerely,

Kimberly Kirchmeyer
Executive Director

CALIFORNIA STATE BOARD OF OPTOMETRY
2450 DEL PASO ROAD, SUITE 105, SACRAMENTO, CA 95834
P (916) 575-7170 F (916) 575-7292 www.optometry .ca.gov

April 24, 2018

The Honorable Evan Low, Chair
Assembly Committee on Business and Professions
State Capitol, Room 383
Sacramento, CA 95814

RE: AB 2138
As amended 04/2/2018
POSITION: Oppose

Dear Assembly Member Low:

The California State Board of Optometry (Board) respectfully opposes AB 2138 as currently written. This bill amends several sections of the Business and Professions Code related to how regulatory licensing boards respond to applicants with non-violent criminal convictions.

The Board regulates the largest population of optometrists, dispensers and opticians in the nation. Its mission is to protect the health and safety of California consumers through licensing, registration, education, and regulation of the practice of Optometry and Opticianry. Public protection is the Board's highest priority in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount

The Board commends Assembly Members Chiu and Low for the intent to remove barriers to licensure. As demonstrated through the Board's 2017 Strategic Plan, AB 1359, AB 1708, and SB 1386, the Board is extremely committed to reviewing current statutes and regulations and removing any unnecessary barriers while still adequately protecting the public.

With many contact lens and spectacle lens dispensers learning the trade in prison, the Board understands the need for individuals to move past their prior convictions, gain employment and contribute to society. However, the Board believes AB 2138 goes too far to protect criminally convicted individuals at the expense of the health and safety of California consumers.

Current rehabilitation criteria set forth in regulation[1] permits the Board to evaluate each conviction on a case by case basis to determine if the conviction is substantially related to the profession with clear and convincing evidence. The Board believes existing statutes, regulations, and case law not only adequately protects consumers but also applicants who clearly demonstrated rehabilitation.

The Board welcomes any opportunity to work with the authors' office to address its concerns.

Please feel free to contact me directly with any questions.

Sincerely,

Jessica Sieferman, Executive Officer
California State Board of Optometry
Jessica.Sieferman@dca.ca.gov

Cc: Members, Assembly Committee on Business and Professions

[1] CCR § 1516. Criteria for Rehabilitation (Optometrists);
CCR § 1399.271. Criteria for Denial – Rehabilitation (dispensers/opticians)