
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 646 **Hearing Date:** June 28, 2022
Author: Low
Version: January 24, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Department of Consumer Affairs: boards: expunged convictions*

HISTORY

Source: Author

Prior Legislation: AB 1616 (Low, 2019), not heard in Senate Business and Professions

Support: California Public Defenders Association; California State Council of Service Employees International Union (SEIU); Contractors State License Board; Department of Consumer Affairs, Board of Barbering and Cosmetology.

Opposition: California Board of Accountancy (unless amended)

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose of this bill is to require a board that posts information on its online licensing system about a licensee's license revocation, if the revocation is the result of a criminal conviction, to take specified actions if the conviction is expunged.

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

Existing law provides for the licensure and regulation of various professions and vocations by boards, bureaus, and other entities within the DCA. (BPC §§ 22, 100-144.5)

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 certain boards within the DCA to require an applicant to provide fingerprints for purposes of conducting criminal history record checks through the Department of Justice (DOJ) and the United States Federal Bureau of Investigation. (BPC § 144.)

Existing law prohibits boards within the DCA from denying a license on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits. (BPC § 475.)

Existing law authorizes 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 under either of the following conditions:

- The applicant has been convicted of a crime within the preceding seven years that is substantially related to the qualifications, functions, or duties of the licensed profession for which the application is made; after seven years, serious, violent, and sexual offenses are still eligible for consideration, and some boards may still consider financial crimes.
- The applicant has been subjected to formal discipline by a licensing board in or outside California 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 and that is substantially related to the qualifications, functions, or duties of the business or profession for which the present application is made. (BPC § 480(a).)

Existing law prohibits a board from denying a license to a person on the basis that the person has been convicted of a crime, or on the basis of acts underlying a conviction for a crime, if that person has obtained a certificate of rehabilitation, has been granted clemency or a pardon by a state or federal executive, or has made a showing of rehabilitation. (BPC § 480(b).)

Existing law prohibits a person from being denied a license on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed or expunged. (BPC § 480(c).)

Existing law prohibits 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. (BPC § 480(d).)

Existing law allows a board to deny 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; however, a board may 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. (BPC § 480(e).)

Existing law prohibits any board that requires fingerprint background checks from requiring an applicant to disclose any information regarding their criminal history; however, a board may request mitigating information from an applicant for purposes of determining substantial relation or demonstrating evidence of rehabilitation, provided that the applicant is informed that disclosure is voluntary and that the applicant's decision not to disclose any information shall not be a factor in a board's decision to grant or deny an application for licensure. (BPC § 480(f)(2).)

Existing law requires certain boards to publish information online regarding accusations, license suspensions, license revocations, and related disciplinary actions taken against licensees. (BPC § 27.)

Existing law requires the Medical Board of California (MBC) to post the current status of its licensees on its website; any revocations, suspensions, probations, or limitations on practice, including those made part of a probationary order or stipulated agreement; historical information regarding probation orders by MBC, or the board of another state or jurisdiction, completed or terminated, including the operative accusation resulting in the discipline by that board; and other

information about a licensee's status and history. Requires MBC, within six months of receiving an expungement order for a misdemeanor or felony conviction, to post a notification of the expungement order and its date on its internet website. (BPC § 2027.)

Existing law authorizes the Board of Psychology (BOP) to post information on its website about all current and former licensees including whether or not the licensee has a record of a disciplinary action; temporary restraining orders, interim suspension orders, revocations, suspensions, probations, or limitations on practice ordered by BOP or by a court with jurisdiction in the state, including those made part of a probationary order, cease practice order, or stipulated agreement, accusations filed by BOP, including those accusations that are on appeal, excluding ones that have been dismissed or withdrawn where the action is no longer pending, citations. (BPC § 2934.1)

Existing law authorizes a court to grant expungement relief, with specified exceptions, for a misdemeanor or felony conviction for which the sentence included a period of probation if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code § 1203.4, subd. (a).)

Existing law authorizes a court to grant expungement relief, with specified exceptions, for a misdemeanor conviction for which the sentence did not include a period of probation, or for an infraction conviction, if the petitioner is not serving a sentence for, on probation for, or charged with the commission of any offense. (Pen. Code § 1203.4a, subd. (a).)

Existing law allows the court to grant expungement relief for a conviction of a petitioner sentenced to county jail pursuant to Penal Code section 1170(h), criminal justice realignment, if specified conditions are satisfied. (Pen. Code § 1203.41.)

This bill requires a board that posts information on its online licensing system about a licensee's license revocation, if the revocation is the result of a criminal conviction, to take the following action if the conviction is expunged, within 90 days of the board receiving an expungement order:

- Post notification of the expungement order if the person applies for or is a board licensee.
- Remove the revocation from the licensee's online licensing system profile if the individual is no longer a board licensee.
- Remove any previously posted information regarding arrests, charges, and convictions if the individual is no longer a board licensee.

This bill requires boards to charge \$25 to an individual to remove this information and prohibits any charge if there is no cost to the board to remove the information.

This bill authorizes a board to adopt regulations to implement these requirements.

This bill specifies that if these requirements conflict with requirements for the Medical Board of California to make information public about licensees, the Medical Board requirements prevail.

COMMENTS

1. Need for This Bill

According to the Author:

To allow for consumer transparency, certain boards under the DCA are required to post on their internet website disciplinary information on a licensee. Members of the public can access information online and check the validity of a license, its issuance and expiration date, and if it has faced disciplinary action from the board.

The California Penal Code grants judicial courts discretionary authority to issue expungements – a process also known as a dismissal. An expungement generally releases a person convicted of a crime from the negative consequences of a conviction by setting aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismissing the accusation or complaint. In order to be eligible for an expungement, a person must have completed the term of their probation in its entirety. In addition, they must not be serving a sentence nor be charged with another criminal offence. Expungement cannot be granted if a person is convicted for specified sex crimes or Vehicle Code violations.

For rehabilitated individuals that were convicted of a crime, the permanent nature of a criminal record can create challenge in finding employment and stability after incarceration. While an expungement does not eliminate the person's record, it provides a potential opportunity for a rehabilitated individual to secure employment through state licensure. If the individual agrees to not seek to practice in the profession for which the license was revoked, it is fair, provided expungement, to give the individual a chance for a new start.

2. Expungement Relief Generally

Defendants who have successfully completed probation, including early discharge, can petition the court to set aside a guilty verdict or permit withdrawal of the guilty or nolo contendere plea and dismiss the complaint, accusation, or information.¹ Defendants who have successfully completed a conditional sentence are also eligible to petition the court for expungement relief under Penal Code section 1203.4. In addition, Penal Code section 1203.4 provides that the court can, in the furtherance of justice, grant this relief if the defendant did not successfully complete probation.²

When a conviction is expunged, the person is generally released from “all penalties and disabilities” resulting from the conviction.³ However, there are a number of exceptions, including several statutory exceptions to that release – e.g., gun possession and holding elected office.⁴ When relief is granted under Penal Code section 1203.4, the conviction is set aside and the charging document is dismissed. However, this neither erases nor seals the record of

¹ Pen. Code § 1203.4.

² *People v. Bishop* (1992) 11 Cal.App.4th 1125, 1129; see *People v. McLernon* (2009) 174 Cal.App.4th 569, 577.

³ (Pen. Code, §§ 1203.4(a), 1203.4a(a), 1203.41(a), 1203.42(a), 1203.49, 1170.9(h).)

⁴ Pen. Code, §§ 1203.4(a), (c), 1203.4a(a), 1203.41(a), (b), 1203.42(b), 1203.49, 1170.9(h)(4).)

conviction. Despite the dismissal order, the conviction record remains a public document. Expungement also does not prevent the conviction from being pleaded and proved just like any other prior conviction in any subsequent prosecution.⁵

Originally, expungement relief was available to defendants placed on probation. However, expungement relief has been extended to other categories of cases, including people convicted of misdemeanors and infractions who were not granted probation.⁶ After the enactment of Realignment, expungement was extended to persons sentenced for a realigned felony who served their sentence in county jail.⁷ In 2017, expungement relief was extended to those who were convicted of the same crimes eligible for expungement under Penal Code section 1203.41, but who served their sentence in state prison instead of county jail because they were sentenced before the enactment of Realignment.⁸

3. DCA License Enforcement and Effect of This Bill

Enforcement programs allow DCA entities to take action against licensees posing a threat to the public. Various boards and bureaus⁹ under the DCA investigate complaints and take disciplinary action against licensees when those licensees have engaged in activities that harm the public. Enforcement typically begins with a complaint. Complaints are received from the public or can be generated by board and bureau staff when, through the course of their work, potential violations of a particular act are identified. Complaints are processed and either forwarded to another agency that have appropriate jurisdiction, forwarded for further investigation or closed and considered resolved. Complaints are generally kept confidential and specific information contained in a complaint is not made public during the investigation process.

Investigations by board or bureau staff that determine a licensee has committed a minor violation that does not warrant formal disciplinary action against a license can result in other forms of discipline like a citation and fine. Complaints warranting additional investigation are either investigated by dedicated board or bureau enforcement staff or referred to the DCA's Division of Investigation (DOI) which provides centralized investigative services for the various regulatory entities. Investigations that determine major violations of a practice act have been committed, or are of a serious nature in terms of the potential harm to the public by a licensee, move on for formal disciplinary action. This involves forwarding a case to the DOJ, which acts as the attorney of record for DCA licensing entities in their administrative actions relating to a license.

Information for licensees of DCA's various boards and bureaus is available in an online searchable portal, which is fully available to the public.¹⁰ Each licensee's profile includes basic information regarding the individual's name, license number, license type and license status. Existing law requires certain boards to publish information regarding accusations, license suspensions, license revocations, and related disciplinary actions taken against licensees. Often, these documents can include information related to criminal charges or convictions that led to a license revocation. This bill requires any board that posts license revocation information in the online portal to take certain actions within 90 days if the revocation was a result of a criminal conviction, and the revoked licensee supplies the board with an expungement order related to

⁵ *People v. Field* (1995) 31 Cal.App.4th 1778, 1787; see *People v. Diaz* (1996) 41 Cal.App.4th 1424.

⁶ Pen. Code, § 1203.4a.

⁷ Pen. Code, § 1203.41.

⁸ Pen. Code, § 1203.42.

⁹ For a full list, see https://www.dca.ca.gov/about_us/entities.shtml

¹⁰ <https://search.dca.ca.gov/>

that conviction. Under the bill, if the revoked licensee is already relicensed or is applying for a new license, the appropriate board or bureau must post the expungement order in the online portal. If the individual is no longer a licensee, the board or bureau must remove the revocation from the online portal and remove any previously posted information regarding arrests, charges, and convictions.

4. Argument in Support

According to SEIU California:

Many of our members are licensed through the professional licensing boards of the Department of Consumer Affairs. These boards play a critical role in launching careers, maintaining and advancing professional standards throughout a career, and provide public transparency. Professional boards also have the power to derail careers and stall reentry into the workforce.

AB 646 requires professional licensing boards under the jurisdiction of the DCA to update or remove information about an individual's revoked license within 90 days of receiving an expungement order related to a conviction. Requires a board that receives a certified copy of an expungement order to update information on its online license search system for individuals who had their license revoked due to the underlying criminal conviction related to that expungement order. Specifically, in cases where the person reapplies for licensure or has been relicensed, the board must post notification of the expungement order and its date on its online license search system. Similarly, if the person is not currently licensed and does not reapply for licensure, the board must remove the initial posting on its online search system that the person's license was revoked and information previously posted regarding arrests, charges, and convictions. In doing so, this bill assists with clearing an individual's public record and supporting them in defining their post-conviction future.

Today, under California law, boards under the Department of Consumer Affairs may deny a license based on specific past criminal convictions. However, an individual may not be denied a license on the basis of a conviction that has been expunged, dismissed, or if the person has received a certificate of rehabilitation. For rehabilitated individuals that were convicted of a crime, the permanent nature of a criminal record can create challenge in finding employment and stability after incarceration. While an expungement does not eliminate the person's record, it provides a potential opportunity for a rehabilitated individual to secure employment through state licensure.

5. Argument in Opposition

According to the California Board of Accountancy, which has an opposed unless amended position, and suggests several clarifying amendments:

AB 646 raises various implementation questions and concerns, as the following details. [...] The provisions of AB 646, as they presently exist, may have unintended consequences if boards are unable to implement the provisions as proposed. Further, while the CBA hasn't opined on the policy components of this bill, it has identified possible impacts to consumer access and the CBA's Mobility Program. This broadens

the reach of AB 646 to a national matter if a CPA's ability to practice under Mobility is hindered.

As an alternative to the previously identified amendments, AB 646 could be further amended to exclude the CBA from the provisions and instead require the CBA to post the expungement orders on its website, similar to the process used by the California Medical Board.

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