
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 1365 **Hearing Date:** April 26, 2022
Author: Jones
Version: February 18, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Licensing boards: procedures*

HISTORY

Source: Author

Prior Legislation: AB 2138 (Chiu) Chapter 995, Stats. 2018)

Support: CA Board of Registered Nursing; Little Hoover Commission

Opposition: ACLU California Action; Dental Hygiene Board of California; Root & Rebound

PURPOSE

The purpose of this bill is to have boards within the Department of Consumer Affairs provide notice to applicants which criminal offenses may make them ineligible for licensure by that board.

Existing law establishes 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 a board to deny a license regulated by the DCA on the grounds that the applicant has been convicted of a crime or has been subject to formal discipline only if either of the following conditions are met:

- a) The applicant has been convicted of a crime within the preceding seven years from the date of application that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, regardless of whether the applicant was incarcerated for that crime, or the applicant has been convicted of a crime that is substantially related of the business or profession for which the application is made

and for which the applicant is presently incarcerated or for which the applicant was released from incarceration within the preceding seven years from the date of application, unless the applicant was convicted of a serious felony, as defined, or convicted of a financial crime currently classified as a felony, as specified; or,

- b) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made; however, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial if the basis for that disciplinary action was a conviction that has been dismissed, as specified. (BPC § 480(a))

Existing law prohibits a person from being denied a license 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, as specified, has been granted clemency or a pardon by a state or federal executive, or has made a showing or rehabilitation. (BPC § 480(b))

Existing law prohibits the delay in processing of an application or a denial of a license based solely on the basis that some or all of the licensure requirements were completed while an individual was incarcerated, as specified. (BPC § 480.5(a))

Existing law requires each board to develop criteria to aid it when considering the denial, suspension, or revocation of a license, to determine whether a crime is substantially related to the qualifications, functions, or duties of the business or profession it regulates; and specifies that the criteria include all of the following:

- a) Nature and gravity of the offense;
- b) Number of years elapsed since the date of the offense; and
- c) Nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed. (BPC § 481(a)(b))

Existing law prohibits a board from denying a license based in whole or in part on a conviction without considering the evidence of rehabilitation submitted by an applicant pursuant to any process established in the practice act or regulations of the particular board and as directed related to rehabilitation criteria. (BPC § 481(c))

Existing law requires each board to post on its website a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, duties of the business or profession it regulates, as specified. (BPC § 481(d))

Existing law requires each board to develop criteria to evaluate the rehabilitation of a person when either considering the denial of a license or considering suspension or revocation of a license, as specified. (BPC § 482(a))

This bill requires each board within the DCA to publicly post on its website a list of criteria used to evaluate applicants with criminal convictions so that potential applicants for licensure may be better informed about their possibilities of gaining licensure before investing time and resources into education, training, and application fees.

This bill requires the DCA to do all of the following:

- a) Establish a process to assist each board in developing its website, including disseminating materials to, and serve as a clearing house to, boards in order to provide guidance and best practices in assisting applicants with criminal convictions gain employment;
- b) Develop a process for each board to use in verifying applicant information and performing background checks, and permits the DCA to examine the current model for reviewing background checks of applicants established by the Department of Insurance. Further, the process developed requires applicants to provide certified court documents instead of listing conditions on an application, as specified; and,
- c) Develop a procedure to provide an informal appeals process, in which the DCA may examine the model for informal appeals used by the Bureau of Security and Investigative Services, and requires the informal appeals process occur between an initial license denial and an administrative law hearing.

COMMENTS

1. Need for This Bill

According to the author:

Existing law authorizes a board within the DCA to deny, suspend, or revoke a license on the grounds that the applicant or licensee has been subject to formal discipline, as specified, or convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, as specified. There is a lack of consistency across DCA Boards and Bureaus in how licensure for former offenders is handled. The current process lets boards have their own autonomy over how they award licensure. In the event an applicant has previous convictions, there is no consolidated, clear way for applicants to understand all the requirements necessary for their license applications. A majority of these boards and bureaus do not include a step in the application process to provide court documents describing their criminal history. This provides a disadvantage to the applicants because according to the current Business and Professions Code, they must disclose their criminal history.

Often times, former offenders are asked to demonstrate that their convictions are unrelated to the license they are trying to acquire. The Little Hoover Commission found that there is not a regulated definition for “related convictions” or “rehabilitation” which can create disadvantages for applicants. At this time, court documents are not required on these applications, so there is often confusion on what the individual’s particular conviction was. Meaning there is a need for further investigation in order to gain an understanding if the applicant’s former offense would disqualify their application. This highlights the need for the application to provide a space for applicants to provide court documentation of their convictions and rehabilitation so they may have an easy and transparent review process. Without these documents being provided within the application, the process will remain unnecessarily overcomplicated and time consuming for applicants with prior

convictions. Furthermore, in the event the applicant is denied, the process for filing an appeal is unnecessarily burdensome, causing an undue barrier to obtaining a license.

2. Little Hoover Commission Recommendations

As noted in the author's statement, this bill implements some recommendations from a 2016 Little Hoover Commission report entitled Jobs for Californians: Strategies to Ease Occupational Barriers specifically among the report's findings were the following suggestions:

With the Department of Consumer Affairs serving as a clearinghouse of best practices and providing guidance to other departments as needed, all licensing authorities should take the following steps to make it easier for former offenders to gain employment:

- Post on their website the list of criteria used to evaluate applicants with criminal convictions so that potential applicants can be better informed about their possibilities of gaining licensure before investing time and resources into education, training and application fees.
- When background checks are necessary, follow the Department of Insurance model and require applicants with convictions to provide certified court documents instead of manually listing convictions. This will prevent license denials due to unintentional reporting errors. The State of California also should expedite the fee-waiver process for all low-income applicants requesting background checks.
- Follow the Bureau of Security and Investigative Services model and create an informal appeals process between an initial license denial and an administrative law hearing.

3. Post on website

This bill requires each board within DCA to post on its website a list of criteria used to evaluate applications with criminal convictions so that potential applicants for licensure may be better informed about their possibilities of gaining licensure before investing time and money in to education and training.

4. Process for verifying applicant information and background checks.

Existing law provides that many of the board in DCA shall perform background checks through the DOJ for licensing purposes. AB 2138 (Chiu and Low; Chapter 995, Statutes of 2018) updated the law to clearly provide offense shall be substantially related to the license if a license is to be denied, and that the offense cannot be more than 7 years old. This bill provides that DCA shall provide for a process for each board to verify the information in the background checks. This can include requiring the applicant to get a certified copy of their offense. The point of getting the certified copy is to allow the applicant to show that the offense, which appear to be related to the license, is not actually related based on the facts of the actual offense. The bill states specifically "this process shall prevent license denials due to unintentional reporting errors."

Is the requirement that the applicant submit a certified copy to onerous? Is the \$40 cost of certified copies prohibitive?

5. Appeals process

This bill also requires DCA to develop a procedure for an informal appeals process.

6. Argument in Support

The Little Hoover Commission supports this bill stating:

In its 2016 report, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*, the Commission found that Californians with convictions on their record face several challenges when trying to become licensed. Specifically, the Commission learned that applicants sometimes face difficulty when asked to list their convictions, perhaps due to significant time passing or mental health problems. The convictions they list on their application might not match what returns on their background check, potentially resulting in an application disqualification. The Commission also found that former offenders typically must demonstrate that their convictions were not substantially related to the duties of the occupation, or if they were, that they have been rehabilitated. However, the Commission discovered that it is often up to the licensing entity to determine how “substantially related” and “rehabilitated” are applied. Applicants who are denied a license may engage in an appeals process, which can be confusing and expensive.

The Commission offered several recommendations to help mitigate some of the barriers applicants face. First, the Commission urged the state to ask only for official records and not rely on the applicants’ memory. Second, the Commission recommended state licensing authorities post on their website the list of criteria used to evaluate applications with criminal convictions so that applicants can be better informed about the possibilities of gaining licensure before investing time and resources into education, training, and application fees. Finally, the Commission also called on the state to create an informal appeals process between a license denial and administrative law hearing to allow applicants the opportunity to explain problems with their applications.

7. Argument in Opposition

Roots and Rebound opposes this bill stating:

The current DCA licensure process under AB 2138 (Chapter 995, 2018) is thorough and clear. An applicant applies for licensure to the specific board for which they seek; registered nurses to the Board of Registered Nursing and architects to the Board of Architects. The applicant gets fingerprinted, as required by law, and within days the board has the applicable conviction history directly from the Department of Justice (DoJ). Suppose the board finds a conviction it believes substantially relates to the profession’s functions, duties, and qualifications. In that case, it will request documents from the court and additional information from the applicant to better understand the mitigating circumstances and their rehabilitative accomplishments. The board then licenses the applicant or denies them. A rejected applicant can then appeal that decision. Consistent across DCA boards, this process is described in AB 2138 (Chapter 995, 2018), codified in Business and Profession Code §480.

This bill does away with this comprehensive and fair legislative scheme in favor of an undefined process that centralizes the process with the DCA. This bill would replace a "substantially related" standard specific to each board's responsibilities and needs with a singular and generalized standard applied across all boards, significantly harming many people with conviction histories in the name of simplicity. While simplicity appears to be a positive goal, it disallows the nuanced or individualized evaluation of applicants and instead forbids them from their desired profession. The current process allows for substantive standards tailored to the wide variety of boards under the DCA, from the Board of Optometry to the Court Reporters Board. This bill would do immense harm to the individuals and the state.

Each Board currently provides standards for evaluating conviction history and evidence of rehabilitation (as required by BPC § 480) and posts those standards on its website. As practitioners and in support of applicants, we always welcome more accessible and comprehensive information regarding the licensing process. However, arguments in favor of SB 1365 misunderstand the actual licensing method for DCA boards and are based on data from before AB 2138 (Chapter 995, 2018) was enacted.

For example, AB 2138 (codified in BPC § 480) does provide an overarching law that broadly addresses licensing across DCA boards. Variations in boards within the scope of BPC § 480 give individual boards discretion necessary not to exclude people unnecessarily based on convictions unrelated to their desired license, largely to the benefit of applicants with convictions. Additionally, applicants are not asked to provide court documents because it is the board's responsibility to collect such information if they intend to deny an applicant based on a substantial relationship between the profession and conviction. Requiring that the court documents be certified increases the cost of an applicant obtaining this information, typically **\$40 per case**, whereas boards are currently authorized to request and obtain such records at no cost to the applicant. These burdens are further amplified if (1) an applicant has more than one conviction, (2) a conviction in a county where they do not live, or (3) they do not recall if contact with law enforcement resulted in a conviction. This bill would shift the responsibility, cost, and expertise for getting such court documents onto the applicants.

Furthermore, boards are forbidden explicitly from requiring an applicant to disclose their criminal history when the board is authorized to perform background checks. This prohibition ensures no inaccurate reporting of conviction history due to time, memory, or other issues and protects applicants.

In closing, SB 1365 fails to consider the existing scheme and variation in boards under the DCA. This bill references one process (DoI) that is more onerous and less protective of people with convictions under the guise of an improved process while harming applicants with convictions.