

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: AB 1662 VERSION: INTRODUCED JANUARY 18, 2022

AUTHOR: GIPSON SPONSOR: AUTHOR

RECOMMENDED POSITION: NONE

**SUBJECT: LICENSING BOARDS: DISQUALIFICATION FROM LICENSURE: CRIMINAL
CONVICTION**

Summary: This bill allows a prospective applicant with a criminal conviction to request a preapplication determination from a DCA licensing board to determine if they may be disqualified from licensure.

Existing Law:

- 1) Only permits a board to deny a license on grounds the applicant has been convicted of a crime or subjected to formal discipline if either of the following are met (BPC §480(a)):
 - a. The applicant has been convicted of a crime within the previous 7 years that is substantially related to the qualifications, functions, or duties of the profession they are applying for. (The 7-year limit does not apply to a conviction for a serious felony as defined in Penal Code ([PC §1192.7](#)) or if they are required to register as a sex offender pursuant to [PC §290\(d\)\(2\) or \(3\)](#)).
 - b. The applicant has been subject to formal discipline by a licensing board in the previous 7 years based on professional misconduct that would have been cause for discipline by the board to which they are applying, and the misconduct is substantially related to the qualifications, functions, or duties of the business or profession. However, disciplinary action within the past 7 years cannot be a basis for denial if the basis for the disciplinary action was a conviction that has been dismissed pursuant to PC §§1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 or was a comparable dismissal or expungement.
- 2) Prohibits a board from denying a license on the basis that an applicant was convicted of a crime or based on acts underlying a conviction of a crime if the applicant has obtained a certificate of rehabilitation under Chapter 3.5 of Title 6 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 BPC §482. (BPC §480(b))

- 3) Prohibits a board from denying a license based on any conviction, or based on acts underlying a conviction, that has been dismissed pursuant to PC §§1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 or a comparable dismissal or expungement. (BPC §480(c))
- 4) Prohibits a board from denying a license based on an arrest that resulted in an outcome other than a conviction, such as an arrest that resulted in an infraction, citation, or juvenile adjudication. (BPC §480(d))
- 5) Prohibits a board from denying a license solely on the applicant's failure to disclose a fact that would not have been cause for denial of the license if it had been disclosed. (BPC §480(e))
- 6) When requesting or acting on an applicant's criminal history information, requires a board to do the following (BPC §480(f)):
 - a. The board is prohibited from requiring an applicant to disclose any information or documentation regarding criminal history. A board may request mitigating information for purposes of determining substantial relationship or evidence of rehabilitation, but disclosure is voluntary, and lack of disclosure cannot be used as a factor in a board's decision to grant or deny an application.
 - b. If the board decides to deny an application based on an applicant's conviction history, it must notify the applicant of the denial, the procedure to challenge the decision or request reconsideration, the right to appeal, and the process for the applicant to request a copy of their complete conviction history and question the accuracy or completeness of the record.
- 7) Requires a board to retain documents submitted by an applicant, notices provided to the applicant, all communications from and provided to the applicant, and criminal history reports, for at least 3 years. (BPC §480(g))
- 8) Requires a board to develop criteria to evaluate the rehabilitation of a person when considering denying, suspending, or revoking a license. (BPC §482)
- 9) States that the Board shall consider a crime, professional misconduct, or act to be substantially related to the qualifications, functions, or duties of one of the Board's professions if it substantially evidences present or potential unfitness of a person holding a license to perform the functions authorized by the license in a manner consistent with public health, safety, or welfare. The Board must consider the following in making the substantial relationship determination (16 CCR §1812):
 - a. The nature and gravity of the offense.

- b. The years elapsed since the date of the offense.
 - c. The nature and duties of the applicable profession.
- 10) Requires the Board to consider whether the applicant made a showing of rehabilitation when considering the denial of license, and specifies criteria that must be considered based on the circumstances (16 CCR §1813):

This Bill:

- 1) Allows a prospective applicant with a criminal conviction to request a preapplication determination from a DCA licensing board. (BPC §480(g)(1))
- 2) Provides that in this request, the prospective applicant would provide information regarding their criminal conviction. The request may be submitted via mail or email and may be done at any time - including before obtaining any training or education required for licensure, or before paying an application fee. (BPC §480(g)(1))
- 3) Provides that upon receiving a request, a board must make a determination if the prospective applicant may be disqualified from licensure based on the information they provided. The board must then deliver the determination to the prospective applicant by mail or email within a reasonable time.

Comment:

- 1) **Author's Intent.** The author's office states that they are seeking to provide a "pre-application determination" for prospective applicants of occupational licenses to know whether their criminal record would disqualify them before the invest in expensive training and education toward a license. They state that 20 other states have enacted similar policies.
- 2) **Accuracy of the Predeterminations.** The bill appears to require a prospective applicant seeking a predetermination to self-report their criminal convictions. It does not indicate whether the Board would be able to verify the convictions. (Doing so would likely result in additional costs to the Board, as discussed below.)

When an applicant self-reports their convictions, there is the possibility that relevant information may be missing or that they may forget to include some information that is necessary to make an accurate determination. If incorrect or incomplete information is reported, then the predetermination may not be accurate.

In addition, other factors could affect the accuracy of the predeterminations. They would not take into account rehabilitation efforts of the applicant, or the time passed since the conviction. (If the conviction is over 7 years old when they apply for licensure, the Board may not deny based on it unless it was for a serious felony.) In addition, if additional convictions happen between the time of the

predetermination and the application for licensure, that will affect the accuracy of the predetermination.

- 3) **Cost of the Predeterminations.** This bill does not permit the Board to charge a fee to make the predeterminations. Staff believes the Board would need two new full-time positions: one office technician to intake and track requests, and one staff services analyst to review the request and documentation, make a determination, and prepare the response.

In addition, it is unclear if the Board would be required to gather additional information about the convictions if the applicant provided incomplete information. Some counties provide this information for free. However, some counties charge various amounts for court documents, copying, and/or certification. (There is not a consistent fee for this across counties.)

- 4) **Board Denials Based on Convictions.** The chart below summarizes the Board’s application denials from Fiscal Year 2015-16 through Fiscal Year 2018-2019.

Type of Convictions	FY 2015/2016	FY 2016/2017	FY 2017/2018	FY 2018/2019	Total
Sex Related Convictions	0	2	1	0	3
Theft & Fraud	4	13	13	4	34
DUI/Alcohol	9	42	44	38	133
Battery/Assault	2	4	5	5	16
Multiple Criminal Acts	3	2	3	0	8
Possession of Drugs	1	0	1	0	2
Murder/Manslaughter	0	0	1	0	1
Total Denied Based on Criminal History	19	63	68	47	197

Denied Based on Other Acts	2	15	17	17	51
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Total Denials	21	78	85	64	248
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Failure to Disclose Denials	1	16	13	10	40
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Applicants who are denied have a right to a hearing under BPC §485. If they wish to have a hearing, they must make a written request to the Board within 60 days.

- 5) **Current Outreach Materials.** The Board has developed an outreach document to help applicants with a past condition or past disciplinary process understand how that will affect the application process for them. This document is on the Board’s website at the following link: https://bbs.ca.gov/pdf/ab2138_fags.pdf

6) Previous Legislation.

- **AB 2138 (Chapter 995, Statutes of 2018)** amended BPC §480 to place limits on when a DCA board can deny a license based on convictions or other acts.
- **AB 2396 (Chapter 737, Statutes of 2014)** prohibited boards from denying a license under BPC §480 because the applicant had a conviction, if that conviction had been expunged under Penal Code Sections 1203.4, 1203.4a, and 1203.41.

7) Support and Opposition.

Support:

- Council of State Governments
- Black Leadership Council
- Little Hoover Commission

Opposition:

- None at this time.

8) History.

2022

04/05/22 In committee: Set, first hearing. Hearing canceled at the request of author.

01/27/22 Referred to Com. on B. & P.

01/19/22 From printer. May be heard in committee February 18.

01/18/22 Read first time. To print.

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Introduced by Assembly Member Gipson

January 18, 2022

An act to amend Section 480 of the Business and Professions Code, relating to professions and vocations.

legislative counsel's digest

AB 1662, as introduced, Gipson. Licensing boards: disqualification from licensure: criminal conviction.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license 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.

This bill would authorize a prospective applicant that has been convicted of a crime to submit to a board a request for a preapplication determination that includes information provided by the prospective applicant regarding their criminal conviction. The bill would require a board that receives that request to determine if the prospective applicant would be disqualified from licensure by the board based on the information submitted with the request, and deliver that determination to the prospective applicant.

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

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

1 SECTION 1. Section 480 of the Business and Professions Code
 2 is amended to read:

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

8 (1) The applicant has been convicted of a crime within the
 9 preceding seven years from the date of application that is
 10 substantially related to the qualifications, functions, or duties of
 11 the business or profession for which the application is made,
 12 regardless of whether the applicant was incarcerated for that crime,
 13 or the applicant has been convicted of a crime that is substantially
 14 related to the qualifications, functions, or duties of the business or
 15 profession for which the application is made and for which the
 16 applicant is presently incarcerated or for which the applicant was
 17 released from incarceration within the preceding seven years from
 18 the date of application. However, the preceding seven-year
 19 limitation shall not apply in either of the following situations:

20 (A) The applicant was convicted of a serious felony, as defined
 21 in Section 1192.7 of the Penal Code or a crime for which
 22 registration is required pursuant to paragraph (2) or (3) of
 23 subdivision (d) of Section 290 of the Penal Code.

24 (B) The applicant was convicted of a financial crime currently
 25 classified as a felony that is directly and adversely related to the
 26 fiduciary qualifications, functions, or duties of the business or
 27 profession for which the application is made, pursuant to
 28 regulations adopted by the board, and for which the applicant is
 29 seeking licensure under any of the following:

- 30 (i) Chapter 6 (commencing with Section 6500) of Division 3.
- 31 (ii) Chapter 9 (commencing with Section 7000) of Division 3.
- 32 (iii) Chapter 11.3 (commencing with Section 7512) of Division
- 33 3.
- 34 (iv) Licensure as a funeral director or cemetery manager under
- 35 Chapter 12 (commencing with Section 7600) of Division 3.
- 36 (v) Division 4 (commencing with Section 10000).

37 (2) The applicant has been subjected to formal discipline by a
 38 licensing board in or outside California within the preceding seven

1 years from the date of application based on professional misconduct
2 that would have been cause for discipline before the board for
3 which the present application is made and that is substantially
4 related to the qualifications, functions, or duties of the business or
5 profession for which the present application is made. However,
6 prior disciplinary action by a licensing board within the preceding
7 seven years shall not be the basis for denial of a license if the basis
8 for that disciplinary action was a conviction that has been dismissed
9 pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425
10 of the Penal Code or a comparable dismissal or expungement.

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

19 (c) Notwithstanding any ~~other~~ provision of this code, a person
20 shall not be denied a license on the basis of any conviction, or on
21 the basis of the acts underlying the conviction, that has been
22 dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42,
23 or 1203.425 of the Penal Code, or a comparable dismissal or
24 expungement. An applicant who has a conviction that has been
25 dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42
26 of the Penal Code shall provide proof of the dismissal if it is not
27 reflected on the report furnished by the Department of Justice.

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

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

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

1 (1) A board issuing a license pursuant to Chapter 3 (commencing
2 with Section 5500), Chapter 3.5 (commencing with Section 5615),
3 Chapter 10 (commencing with Section 7301), Chapter 20
4 (commencing with Section 9800), or Chapter 20.3 (commencing
5 with Section 9880), of Division 3, or Chapter 3 (commencing with
6 Section 19000) or Chapter 3.1 (commencing with Section 19225)
7 of Division 8 may require applicants for licensure under those
8 chapters to disclose criminal conviction history on an application
9 for licensure.

10 (2) Except as provided in paragraph (1), a board shall not require
11 an applicant for licensure to disclose any information or
12 documentation regarding the applicant's criminal history. However,
13 a board may request mitigating information from an applicant
14 regarding the applicant's criminal history for purposes of
15 determining substantial relation or demonstrating evidence of
16 rehabilitation, provided that the applicant is informed that
17 disclosure is voluntary and that the applicant's decision not to
18 disclose any information shall not be a factor in a board's decision
19 to grant or deny an application for licensure.

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

23 (A) The denial or disqualification of licensure.

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

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

28 (D) The processes for the applicant to request a copy of the
29 applicant's complete conviction history and question the accuracy
30 or completeness of the record pursuant to Sections 11122 to 11127
31 of the Penal Code.

32 (g) (1) *A prospective applicant that has been convicted of a*
33 *crime may submit to a board, by mail or email, and at any time,*
34 *including before obtaining any training or education required for*
35 *licensure by that board or before paying any application fee, a*
36 *request for a preapplication determination that includes*
37 *information provided by the prospective applicant regarding their*
38 *criminal conviction.*

39 (2) *Upon receiving a request submitted pursuant to paragraph*
40 *(1), a board shall determine if the prospective applicant may be*

1 *disqualified from licensure by the board based on the information*
2 *submitted with the request, and deliver the determination by mail*
3 *or email to the prospective applicant within a reasonable time.*

4 ~~(g)~~

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

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

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

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

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

21 (D) The final disposition and demographic information,
22 consisting of voluntarily provided information on race or gender,
23 of any applicant described in subparagraph (A), (B), or (C).

24 (3) (A) Each board under this code shall annually make
25 available to the public through the board's internet website and
26 through a report submitted to the appropriate policy committees
27 of the Legislature deidentified information collected pursuant to
28 this subdivision. Each board shall ensure confidentiality of the
29 individual applicants.

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

32 ~~(h)~~

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

35 ~~(i)~~

36 (j) This section does not in any way modify or otherwise affect
37 the existing authority of the following entities in regard to
38 licensure:

39 (1) The State Athletic Commission.

40 (2) The Bureau for Private Postsecondary Education.

- 1 (3) The California Horse Racing Board.
- 2 ~~(j) This section shall become operative on July 1, 2020.~~

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