

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: SB 1365 **VERSION: INTRODUCED FEBRUARY 18, 2022**

AUTHOR: JONES **SPONSOR: AUTHOR**

RECOMMENDED POSITION: NONE

SUBJECT: LICENSING BOARDS: PROCEDURES

Summary: This bill requires boards under the Department of Consumer Affairs (DCA) to publicly post a list of criteria used to evaluate applicants with criminal convictions on its website. It also requires DCA to take steps to establish procedures for evaluating and assisting applicants with criminal convictions.

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 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 profession. The criteria must include the nature and gravity of the offense, the time elapsed since the offense, and the nature and duties of the profession. A summary of the criteria must be posted on the Board's website. (BPC §481)
- 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 California Code of Regulations (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):
- 11)** When denying a license, requires boards to either file and serve a statement of issues, or notify the applicant of the denial, stating both the reason and the right to appeal if written requires for a hearing is made within 60 days. (BPC §485)

This Bill:

- 1)** Requires each DCA board to publicly post a list of criteria used to evaluate applicants with criminal convictions on its website. (BPC §114.6(a))
- 2)** Requires DCA to do the following (BPC §114.6(b))
 - a. Establish a process to assist its boards in developing their list of criteria to evaluate applicants with criminal convictions. This includes disseminating materials to and serving as a clearing house to the boards to provide guidance and best practices in assisting applicants with criminal convictions to gain employment.
 - b. Develop a process for each board to use in verifying applicant information and perform applicant background checks. (The bill suggests DCA examine the background check model used by the Department of Insurance.)
 - i. The process must require applicants to provide certified court documents instead of listing convictions on the application.
 - ii. The process must prevent license denials due to unintentional reporting errors.
 - iii. The process must include procedures to expedite the fee-waiver process for a low-income applicant requesting a background check.
 - c. Develop a procedure to provide for an informal appeals process, to take place between an initial license denial and an administrative law hearing. (The bill suggests DCA examine the informal appeals process used by the Bureau of Security and Investigative Services.)

Comment:

- 1) **Author's Intent.** The author's office states the following:

“The current laws for licensure make it difficult for the formerly incarcerated population to apply for licenses. There is limited information and few resources available to support these individuals as they apply. Therefore, there is a growing need for clearer instructions and better transparency of this process, so all applicants are aware of the existing rules of each license.”...“By streamlining the current process and providing accurate information on online platforms, the application will be more straightforward and accessible to all Californians. It will also give formally incarcerated people all the necessary information to decide whether to invest their time and money apply for a license.”

- 2) **Fee Waivers for Background Checks.** The bill requires that DCA develop a process to include procedures to expedite the fee-waiver process for a low-income applicant requesting a background check.

Live Scan fingerprinting is required in order to complete a background check. However, the fee for this is not charged by DCA or any of its licensing Boards – it is collected by the Department of Justice at the site of the Live Scan. Therefore, the decision whether or not to waive this fee for certain applicants lies with the Department of Justice.

- 3) **Current Website Posting.** This bill would require boards to post a list of criteria used to evaluate applicants with criminal convictions.

However, the Board has already 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_faqs.pdf

In addition, current law already requires boards under DCA to post its substantially related conviction criteria online.

- 4) **Conflict with Current Law.** Current law (BPC §480(f)(2)) prohibits a board from requiring an applicant to disclose any information regarding their criminal history. The Board receives this information directly from the Department of Justice.

However, this bill proposes requiring applicants to provide court certified documents related to their convictions, instead of listing convictions on application documents. This requirement is in conflict with current law, as the Board cannot require an applicant to list their convictions. Obtaining criminal history from the fingerprint reports is likely more accurate because it does not rely on memory, and less cumbersome as the applicant does not have to gather all the documents themselves.

- 5) **Informal Appeals.** This bill requires DCA to develop a procedure for informal appeals, to occur in between an initial license denial and an administrative law hearing. The bill suggests examining the model for informal appeals used by DCA's Bureau of Security and Investigative Services (BSIS).

The BSIS handles their informal appeals by [Disciplinary Review Committees](#). These committees handle appeals from applicants and licensees, and consists of appointed members. The BSIS has an FAQ on its website that explains the informal disciplinary review process:

<https://www.bsis.ca.gov/consumers/faqs/drc.pdf>

6) **Current Related Legislation**

AB 1662 (Gipson) proposes allowing 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.

7) **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.

8) **Support and Opposition**

Support:

- Little Hoover Commission

Opposition:

- Dental Hygiene Board of California

9) **History**

2022

04/06/22 Set for hearing April 26.

04/05/22 From committee: Do pass and re-refer to Com. on PUB. S. (Ayes 13. Noes 0.) (April 4). Re-referred to Com. on PUB. S.

03/16/22 Set for hearing April 4.

03/09/22 Referred to Coms. on B., P. & E.D. and PUB. S.

02/22/22 From printer.

02/18/22 Article IV Section 8(a) of the Constitution and Joint Rule 55 dispensed with February 7, 2022, suspending the 30-calendar day requirement.

02/18/22 Introduced. Read first time. To Com. on RLS. for assignment. To print.

Introduced by Senator JonesFebruary 18, 2022

An act to add Section 114.6 to the Business and Professions Code, relating to professions and vocations.

legislative counsel's digest

SB 1365, as introduced, Jones. Licensing boards: procedures.

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 require each board within the department to publicly post on its internet 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. The bill would require the department to establish a process to assist each board in developing its internet website, as specified.

The bill would also require the department to develop a process for each board to use in verifying applicant information and performing background checks of applicants, and would require that process to require applicants with convictions to provide certified court documents instead of listing convictions on application documents. The bill would further require the board to develop a procedure to provide for an informal appeals process that would occur between an initial license denial and an administrative law hearing.

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 114.6 is added to the Business and
 2 Professions Code, to read:

3 114.6. (a) Each board within the department shall publicly
 4 post on its internet website a list of criteria used to evaluate
 5 applicants with criminal convictions so that potential applicants
 6 for licensure may be better informed about their possibilities of
 7 gaining licensure before investing time and resources into
 8 education, training, and application fees.

9 (b) The department shall do all of the following:

10 (1) (A) Establish a process to assist each board in developing
 11 its internet website in compliance with subdivision (a).

12 (B) As part of this process, the department shall disseminate
 13 materials to, and serve as a clearing house to, boards in order to
 14 provide guidance and best practices in assisting applicants with
 15 criminal convictions gain employment.

16 (2) (A) Develop a process for each board to use in verifying
 17 applicant information and performing background checks of
 18 applicants.

19 (B) In developing this process, the board may examine the model
 20 used for performing background checks of applicants established
 21 by the Department of Insurance. The process developed shall
 22 require applicants with convictions to provide certified court
 23 documents instead of listing convictions on application documents.
 24 This process shall prevent license denials due to unintentional
 25 reporting errors. This process shall also include procedures to
 26 expedite the fee-waiver process for any low-income applicant
 27 requesting a background check.

28 (3) (A) Develop a procedure to provide for an informal appeals
 29 process.

30 (B) In developing this informal appeals process, the department
 31 may examine the model for informal appeals used by the Bureau
 32 of Security and Investigative Services. The informal appeals

1 process shall occur between an initial license denial and an
2 administrative law hearing.

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