

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES BILL ANALYSIS

BILL NUMBER: AB 646 **VERSION:** AMENDED JANUARY 24, 2022

AUTHOR: LOW **SPONSOR:** AUTHOR

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUBJECT: DEPARTMENT OF CONSUMER AFFAIRS: BOARDS: EXPUNGED CONVICTIONS

Summary:

This bill would require DCA boards, within 90 days upon a licensee's or former licensee's provision of a certified copy of expungement, to update their online license search system with notification of the expungement order (if the person is relicensed or reapplies for licensure) or to remove the posting of revocation and previously posted arrests, charges, and convictions (if the person's license was revoked, they are no longer licensed, and have not reapplied).

Existing Law:

1. Permits a licensing board under the Department of Consumer Affairs (DCA) to suspend, revoke, or discipline a license on the ground that the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession that they are licensed for. (Business and Professions Code (BPC) §490(a) and (b))
2. Defines a conviction as a plea or verdict of guilty or a conviction following a plea of nolo contendere. A board may act once the time for appeal has elapsed, the judgement of conviction has been affirmed on appeal, or an order granting probation is made suspending imposition of the sentence, irrespective of a subsequent order under Penal Code (PC) §1203.4. (BPC §490(c))
3. Permits a defendant who has fulfilled the conditions of their probation, been discharged prior to the termination of their probation, or for whom a court determines in its discretion that such relief should be granted, and who is not serving a sentence or probation for any offense, or charged with commission of any offense, to withdraw their plea of guilty or nolo contendere and instead enter a plea of not guilty. If the defendant has been convicted after a plea of not guilty, the court shall set aside the guilty verdict. For either type of case, the court must dismiss the accusations or information against the defendant and release them from all penalties and disabilities resulting from the offense. Certain convictions are not eligible for this,

mainly certain Vehicle Code violations and certain convictions involving sex offenses with minors. (Penal Code (PC) §1203.4)

4. Requires specified state entities, including the Board of Behavioral Sciences (Board), to provide information on the internet regarding the status of every license issued. This information must be provided in accordance with the California Public Records Act (commencing with Section 6250 of the Government Code) and the Information Practices Act of 1977 (commencing with Section 1798 of the Civil Code). (BPC §27)
5. Requires the public information on licensees that must be provided on the internet to include information on suspensions and revocations of licensees and other related enforcement action. The information posted may not include personal information such as home telephone number, date of birth, or social security number. (BPC §27)
6. Requires the Medical Board of California to post information on its website about the current status of the license for all current and former licensees. This includes (BPC §2027):
 - Whether or not the licensee is presently in good standing;
 - Active temporary restraining orders or interim suspension orders against the licensee;
 - Current accusations filed by the Attorney General, including ones on appeal.
 - Any final revocations and suspensions taken or the surrender of a license by the licensee in relation to a disciplinary action or investigation;
 - Any felony convictions;
 - Any misdemeanor convictions resulting in a disciplinary action or accusation that is not subsequently withdrawn or dismissed.
7. Requires the Medical Board of California, for any required website postings of a felony or misdemeanor conviction, to post notification of an expungement order and its corresponding date, within six months upon receipt from the licensee of a certified copy of an expungement order granted pursuant to Penal Code §1203.4. (BPC §2027(b)(4) and (5))

This Bill:

1. Requires that a DCA board must update their online license search system posting for a person whose license was revoked because they were convicted of a crime,

upon receiving from them a certified copy of an expungement order pursuant to PC §1203.4 for the underlying offense, as follows (BPC §493.5(a)):

- a. If the person reapplies for licensure or has been relicensed, the board must post notification of the expungement order and its date.
 - b. If the person is not currently licensed and does not reapply for licensure, the board must remove the initial posting that the person's license was revoked, and information previously posted regarding arrests, charges and convictions.
2. The online license search system posting must be updated within 90 days of receiving the expungement order, unless prohibited by another law (BPC §493.5(a)).
 3. Sets a fee of \$25 to the applicant to cover reasonable costs associated with this workload. (BPC §493.5(b))

Comment:

1) Author's Intent

According to the author:

"[This bill] is designed to reduce employment barriers for people with previous criminal records who have been rehabilitated and whose conviction has been dismissed, or expunged, through the judicial process. Under current law, individuals who have successfully rehabilitated may continue to face stigma and barriers to find employment. Although they are intent on positively contributing to society by finding employment and self-sufficiency, state records may not reflect an expungement that was granted by the courts. [This bill] allows individuals who were formerly licensed through the state of California to appropriately reflect the record of their rehabilitation as granted by the judicial branch, and improve their opportunity to seek meaningful employment."

2) Medical Board of California

The Medical Board of California already has a provision in its statutes that is similar to this proposal. For felony or misdemeanor convictions that are expunged, it is required to, upon receipt of a certified copy of an expungement order, post notification of the expungement order on its website. (BPC §2027)

Medical Board indicates that one staff person handles this workload, and that it is a small portion of that person's duties. Therefore, the fiscal impact of the requirement on their board is minor and absorbable. For Fiscal Year 2019, Medical Board had approximately 150,000 licensed physicians and surgeons.

3) Previous Position

This is a two-year bill, which the author's office plans to move this year. The Board took a "support if amended" position on a previous version of this bill last year at its May Board meeting. The Board recognized and supported the intent of the bill, but expressed concerns about the requirement to remove the revoked posting for an individual who is not currently licensed and does not reapply. The concerns were as follows:

- a. **Exempt Settings:** An individual whose license is revoked may choose to continue practicing in an exempt setting. An exempt setting is defined in the Board's practice acts as a government entity, school, college, university, or institution that is nonprofit and charitable. By law, a license is not required to practice the Board's regulated professions in these settings. If a revoked license posting is removed from the website, these settings will have no way of knowing that one of their unlicensed practitioners has a revoked license.
- b. **Practice in Another State:** An individual whose license is revoked may decide to obtain a license to practice in another state. If the revoked posting is removed from the Board's website, the other state will be unaware of this when making their decision to issue a license.
- c. **Similar Practice:** When the Board revokes a license, the former licensee will sometimes choose to practice in a field related to the Board's professions but that does not require a license. Life coaching is an example of a related field that some revoked licensees choose. However, the fact that a license was revoked (and potentially subsequently the conviction was expunged) is important for the consumer to know so that they can make an informed decision for their situation.

Given these concerns, the Board requested an amendment to BPC section 493.5(a)(2). Instead of requiring deletion of a license revocation from the website if there is an expungement and the person does not reapply, the Board believed public protection would be better served by requiring a notification of the expungement order and corresponding date be posted. This would provide the former licensee a chance to show rehabilitation efforts, while at the same time allowing consumers the relevant information needed to make an informed decision based on their unique circumstances.

Staff submitted the above position and concerns to the author's office via a letter after the Board meeting last year. However, amendments to address them have not been made at this time.

At its April 20, 2022 meeting, the Policy and Advocacy Committee recommended that the Board continue with the above position.

4) Previous Legislation

- **AB 1616 (Low, 2020)** This bill was very similar to the bill being considered today. The Board had also taken a “support if amended” position on this bill, however, the bill died in the Senate.
- **AB 2138 (Chiu and Low, Chapter 995, Statutes of 2018)** Removes some of the licensing and employment barriers that those with prior criminal convictions or disciplinary actions often encounter, if they can demonstrate rehabilitation. It makes changes to the law regarding when licensing boards can deny, suspend, or revoke a license due to prior convictions or discipline.
- **AB 2396 (Bonta, Chapter 737, Statutes of 2014)** Prohibits DCA 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, or 1203.41.

5) Support and Opposition

Support:

- California Psychological Association
- Contractors State License Board

Opposition: None at this time.

6) History

2022

- 02/01/22 In Senate. Read first time. To Com. on RLS. for assignment.
01/31/22 Read third time. Passed. Ordered to the Senate. (Ayes 75. Noes 0.)
01/25/22 Read second time. Ordered to third reading.
01/24/22 Read second time and amended. Ordered returned to second reading.
01/20/22 From committee: Amend and do pass as amended. (Ayes 12. Noes 0.) (January 20).

2021

- 05/20/21 In committee: Hearing postponed by committee.
04/21/21 In committee: Set, first hearing. Referred to suspense file.
04/15/21 Re-referred to Com. on APPR.
04/14/21 From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
04/13/21 Re-referred to Com. on APPR.
04/12/21 From committee chair, with author's amendments: Amend, and re-refer to Com. on APPR. Read second time and amended.
03/23/21 From committee: Do pass and re-refer to Com. on APPR. (Ayes 17. Noes 0.) (March 23). Re-referred to Com. on APPR.
03/23/21 Coauthors revised.
02/25/21 Referred to Com. on B. & P.
02/13/21 From printer. May be heard in committee March 15.

02/12/21 Read first time. To print.

AMENDED IN ASSEMBLY JANUARY 24, 2022

AMENDED IN ASSEMBLY APRIL 14, 2021

AMENDED IN ASSEMBLY APRIL 12, 2021

california legislature—2021–22 regular session

ASSEMBLY BILL

No. 646

Introduced by Assembly Members Low, Cunningham, and Gipson
(Coauthor: Senator Roth)

February 12, 2021

An act to add Section 493.5 to the Business and Professions Code, relating to professions and vocations.

legislative counsel's digest

AB 646, as amended, Low. Department of Consumer Affairs: boards: expunged convictions.

Existing law establishes the Department of Consumer Affairs, which is composed of various boards, and authorizes a board to suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law, the Medical Practice Act, provides for the licensure and regulation of the practice of medicine by the Medical Board of California and requires the board to post certain historical information on current and former licensees, including felony and certain misdemeanor convictions. Existing law also requires the Medical Board of California, upon receipt of a certified copy of an expungement order from a current or former licensee, to post notification of the expungement order and the date thereof on its internet website.

This bill would require a board within the department that has posted on its ~~internet website~~ *online license search system* that a person’s license was revoked because the person was convicted of a crime, within 90 days of receiving an expungement order for the underlying offense from the person, if the person reapplies for licensure or is relicensed, to post notification of the expungement order and the date thereof on ~~the board’s internet website.~~ *its online license search system.* The bill would require the board, on receiving an expungement order, if the person is not currently licensed and does not reapply for licensure, to remove within the same period the initial posting on its ~~internet website~~ *online license search system* that the person’s license was revoked and information previously posted regarding arrests, charges, and convictions. The bill would ~~authorize~~ *require* the board to charge a fee of \$25 to the ~~person, not to exceed the cost~~ *person to cover the reasonable regulatory cost* of administering the bill’s ~~provisions.~~ *provisions, unless there is no associated cost.* The bill would require the fee to be deposited by the board into the appropriate fund and would make the fee available only upon appropriation by the Legislature.

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 493.5 is added to the Business and
- 2 Professions Code, to read:
- 3 493.5. (a) A board within the department that has posted on
- 4 its ~~internet website~~ *online license search system* that a person’s
- 5 license was revoked because the person was convicted of a crime,
- 6 upon receiving from the person a certified copy of an expungement
- 7 order granted pursuant to Section 1203.4 of the Penal Code for the
- 8 underlying offense, shall, within 90 days of receiving the
- 9 expungement order, unless it is otherwise prohibited by law, or by
- 10 other terms or conditions, do either of the following:
- 11 (1) If the person reapplies for licensure or has been relicensed,
- 12 post notification of the expungement order and the date thereof on
- 13 its ~~internet website.~~ *online license search system.*
- 14 (2) If the person is not currently licensed and does not reapply
- 15 for licensure, remove the initial posting on its ~~internet website~~
- 16 *online license search system* that the person’s license was revoked

1 and information previously posted regarding arrests, charges, and
2 convictions.

3 (b) ~~A~~(1) *Except as provided in paragraph (2), a board within*
4 *the department may shall charge a fee of twenty-five dollars (\$25)*
5 *to a person described in subdivision (a), not to exceed (a) to cover*
6 *the reasonable regulatory cost of associated with administering*
7 *this section. The*

8 (2) *A board shall not charge the fee if there is no cost associated*
9 *with administering this section.*

10 (3) *A board may adopt regulations to implement this subdivision.*
11 *The adoption, amendment, or repeal of a regulation authorized*
12 *by this subdivision is hereby exempted from the rulemaking*
13 *provisions of the Administrative Procedure Act (Chapter 3.5*
14 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
15 *2 of the Government Code).*

16 (4) *The fee shall be deposited by the board into the appropriate*
17 *fund and shall be available only upon appropriation by the*
18 *Legislature.*

19 (c) For purposes of this section, “board” means an entity listed
20 in Section 101.

21 (d) If any provision in this section conflicts with Section 2027,
22 Section 2027 shall prevail.

O