
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1662 **Hearing Date:** June 28, 2022
Author: Gipson
Version: April 27, 2022
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Licensing boards: disqualification from licensure: criminal conviction*

HISTORY

Source: Council of State Governments – Justice Center

Prior Legislation: None

Support: Calchamber; Little Hoover Commission; U.S. Chamber of Commerce

Opposition: Board of Registered Nursing; California Board of Psychology; Speech-language Pathology and Audiology and Hearing Aid Dispensers Board

Assembly Floor Vote: 60 - 5

PURPOSE

The purpose of this bill is to require boards within the Department of Consumer Affairs (DCA), other than the Bureau for Private Postsecondary Education and State Athletic Commission, and the Department of Real Estate, to establish a process for prospective applicants to request a preapplication determination to ascertain whether their criminal history could be cause for a licensure application to be denied.

Existing law establishes 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 (FBI). (BPC § 144)

Existing law prohibits boards under 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:

- a) 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.
- b) 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 a board that decides to deny an application based solely or in part on the applicant's conviction history to notify the applicant in writing of all of the following:

- a) The denial or disqualification of licensure.
- b) Any existing procedure the board has for the applicant to challenge the decision or to request reconsideration.
- c) That the applicant has the right to appeal the board's decision.

- d) The processes for the applicant to request a copy of the applicant's complete conviction history and question the accuracy or completeness of the record. (BPC § 480(f)(3))

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 requires each board to develop criteria to evaluate the rehabilitation of a person when considering the denial of a license based on prior misconduct. (BPC § 482)

Existing law upon denial of a license, requires a board to inform the applicant of the earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, unless the board prescribes an earlier date or a later date is prescribed by another statute, and that all competent evidence of rehabilitation presented will be considered upon a reapplication. (BPC § 486)

Existing law authorizes a board to grant a license, grant a probationary license, deny a license, or take other appropriate action following a hearing requested by an applicant whose license was previously denied. (BPC § 488)

This bill requires DCA boards, other than the Bureau for Private Postsecondary Education and State Athletic Commission, and the Department of Real Estate, to establish a preapplication determination process for prospective applicants to determine whether their criminal history could be cause for a licensure application to be denied.

This bill authorizes a board, with existing authority to require an applicant to provide a full set of fingerprints for background checks, to require prospective applicants who request a preapplication determination to provide the board fingerprints for purposes of conducting a criminal history record check as part of the preapplication determination.

This bill authorizes the California Architects Board, the Landscape Architects Technical Committee, the Board of Barbering and Cosmetology, and the Bureau of Household Goods and Services to require prospective applicants for licensure to disclose criminal conviction history as part of a preapplication determination.

This bill specifies that a preapplication determination shall not constitute the denial or disqualification of an application.

This bill provides that the board shall publish information regarding its process for preapplication determination on its website.

This bill allows the board to charge a \$50 fee for a prospective applicant.

This bill requires a board that determines a prospective applicant's criminal history could be cause for their completed application to be denied to provide them with: a summary of the criteria used to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession the board regulates; the processes for the applicant to request a copy of their conviction history and to question the accuracy or completeness of the record; notice that the applicant would have the right to appeal the board's decision; and any existing procedure the board has for the prospective applicant to challenge the decision or to request reconsideration following the denial of a completed application, including a copy of the criteria relating to rehabilitation.

This bill requires a board to publish information on its website regarding its process for requesting a preapplication determination. Authorizes a board to charge a prospective applicant a fee of \$50 or less for preapplication determination.

This bill prohibits a preapplication determination from being a requirement for licensure or for participation in any education or training program.

COMMENTS

1. Need for This Bill

According to the author:

AB 1662 seeks to provide a “pre-application determination” for prospective applicants of occupational licenses to know whether their criminal record is disqualifying, before they invest inexpensive training and education required for a license.

Workers with criminal histories can be significantly deterred from pursuing work in licensed occupations and professions due to uncertainty about whether their criminal history will be deemed disqualifying by a licensing authority. Currently, the criminal history of prospective licensees is only considered when a formal application is filed – i.e., *after* a person has met the general training and educational requirements required for licensure. Because the costs associated with meeting those general requirements are so significant (both in terms of time and money), workers with criminal histories – even for minor offenses – must assume enormous risks when deciding to pursue licensure. For many, the risk that licensure *may* be denied based on their criminal history is too much to bare, forcing determined, qualified, and rehabilitated workers to avoid licensed fields altogether.

Pre-application determination provisions are part of model licensing laws and recommendations advocated for by a variety of groups including the National Employment Law Project (see <https://www.nelp.org/publication/unlicensed-untapped-removing-barriers-state-occupational-licenses/>), Institute for Justice (see <https://ij.org/report/barred-from-working/>), and Council of State Governments Justice Center (see <https://csgjusticecenter.org/projects/fair-chance-licensing/>). See

also, National Conference of State Legislatures, Barriers to Work: Improving Employment in Licensed Occupations for Individuals with Criminal Records, https://www.ncsl.org/Portals/1/Documents/Labor/Licensing/criminalRecords_v06_web.pdf

2. Department of Consumer Affairs

DCA is one of 12 entities operating under the direction of the Business, Consumer Services and Housing Agency (BCHS). DCA issues almost 4 million licenses, certificates, and approvals to individuals and businesses in over 250 categories. This involves setting the qualifications and levels of competency for the professionals regulated by the DCA's boards and bureaus which license, register, or certify practitioners; investigate complaints; and discipline violators. Fees paid by DCA licensees fund DCA operations almost exclusively.

Within the DCA are 38 entities, including 26 boards, eight bureaus, two committees, one program, and one commission (hereafter "boards" unless otherwise noted). Collectively, these boards regulate more than 100 types of businesses and 200 different industries and professions. As regulators, these boards perform two primary functions:

- Licensing—which entails ensuring only those who meet minimum standards are issued a license to practice, and
- Enforcement—which entails investigation of alleged violations of laws and/or regulations and taking disciplinary action, when appropriate.

DCA entities are semiautonomous regulatory bodies with the authority to set their own priorities and policies and take disciplinary action on their licensees. Board members are representatives of the public and the profession a particular board oversees.

Some programs within DCA have a Disciplinary Review Committee (DRC) comprised of board members, which conducts informal administrative hearings and renders decisions regarding appealed citations or enforcement decisions.

3. Criminal history barriers to employment

Concerns have been raised in the past number of years that statutory authority for boards and bureaus to deny a license to an individual who has "done any act involving honesty, fraud, or deceit" for self-benefit or harm to other was too broad, and could potentially go beyond criminal convictions. Interested parties argued that this authority opened the door for many licensure applications to be denied based purely on alleged misconduct that has not been determined to have occurred through standard due process.

The discretion for boards and bureaus to deny licensure to applicants with criminal histories has also been criticized, despite the guarantee of due process afforded to these applicants prior to a crime being reflected on their record. The 2016 National Employment Law Project report *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* highlights "a lack of transparency and predictability in the licensure decision-making process and confusion caused by a labyrinth of different restrictions" in regulatory schemes across the country. California was specifically graded as "Needs Improvement," with recommendations including:

- Expand blanket ban prohibition to all occupations with one overarching law.
- Expand occupation-relatedness requirement to all.
- Require consideration of the time elapsed since conviction.
- Prohibit consideration of certain record information (e.g., arrests, lesser offenses, older offenses).
- Require consideration of the applicant's rehabilitation.

Additional studies and reports have focused on the impacts of licensing requirements for employment and on individuals seeking to become employed. According to a July 2015 report on occupational licensing released by the White House, strict licensing creates barriers to mobility for licensed workers, citing several groups of people particularly vulnerable to occupational licensing laws, including former offenders, military spouses, veterans and immigrants.

In October 2016, the Little Hoover Commission released a report entitled *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*. The report noted that one out of every five Californians must receive permission from the government to work, and for millions of Californians that means contending with the hurdles of becoming licensed. The report noted that many of the goals to professionalize occupations, standardize services, guarantee quality and limit competition among practitioners, while well intended, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers. The study found that occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach.

The report found that California compares poorly to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means. According to the report, researchers from the Institute for Justice selected 102 lower-income occupations, defined by the Bureau of Labor Statistics as making less than the national average income, ranging from manicurist to pest control applicator. Of the 102 occupations selected, California required licensure for 62, or 61 percent of them. According to the report, California ranked third most restrictive among 50 states and the District of Columbia, following only Louisiana and Arizona. California ranked seventh of 51 when measuring the burden imposed on entrants into these lower- and moderate-income occupations: on average, California applicants must pay \$300 in licensing fees, spend 549 days in education and/or training and pass one exam. The report specifically noted improvements that could be made in the information licensing entities provide applicants to ensure a smoother licensing process.

During the 2016-2017 sunset review oversight of the DCA, this Committee asked what steps DCA was taking to respond to the Little Hoover Commission report and how the DCA is advising entities within the DCA on best practices to assist in the licensure process. The DCA responded that it was working with the BCHS to identify areas where unnecessary barriers to licensure can be reduced and noted that one key area of this work has been on the examination of possible barriers to licensure for individuals reentering the workforce after incarceration. The DCA stated that it had been assessing the criteria used by boards and bureaus to determine if a past conviction is substantially related, as well as how they consider rehabilitation. The DCA

reported that clarifying criteria through regulations, through FAQs, or some combination of both could assist applicants and potentially encourage more individuals with prior convictions to apply and stated that it "intends to work with the various boards and bureaus to achieve more clarity and remove unnecessary barriers to licensure. Some of the avenues the DCA is exploring include: providing clear descriptions of licensing criteria on each program's website, potentially re-drafting some regulations to create some consistency and additional clarity, and providing more hands-on guidance to licensees that inquire about these processes."

4. Preapplication determination

This bill creates process for most of the boards within the Department of Consumer affairs to create a preapplication determination for prospective applicants to make a determination whether their criminal background will be a barrier to their employment. If it is found that the person's criminal record may be cause for denial then the person will be given: a summary of criteria of used; a copy of the criminal record used so it can be checked for accuracy; and, the right to appeal the decision. The hope is this will help a person determine what kind of training or job they should pursue so that they don't waste time and money focusing on a career path for which they will be found ineligible.

5. Recent legislation

SB 1365 (Jones) which passed this Committee on April 26 and was held in Senate Appropriations required boards within the Department of Consumer Affairs to publicly post which criminal offenses may make a person ineligible for licensure by that board and provide a process for a person to get a certified copy of records to challenge a denial.

AB 2138 (Chiu and Low) Chapter 995, Statutes of 2018, made substantial reforms to the license application process for individuals with criminal records. Under AB 2138, an application may only be denied based on prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, the bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. Most DCA programs updated, or are in the final process, of updating regulations to ensure compliance with AB 2138.

6. Argument in Support

The US Chamber of Commerce supports this bill stating:

The Chamber believes that a job is one of the best ways for people with criminal records not to re-offend. However, occupational licensing requirements often block or burden ex-offenders as they pursue new opportunities, sometimes after having invested resources into pursuing an occupation for which they are subsequently denied a license. AB 1662 would allow an ex-offender to petition a licensing board—before investing in training—for a determination that the ex-offender will not be disqualified from gaining a license because of past offenses. Having that

determination would assist ex-offenders as they work to ensure that their path ahead leads to a better life.

7. Argument in Opposition

The California Board of Psychology opposes this bill stating:

Currently, the Board reviews applicants' criminal history at the end of the application process. This bill would require the Enforcement Unit to complete the review process for both applicants and potential applicants. Part of the applicants' application fees pay for this review. While the Board appreciates the inclusion of a \$50 fee that can be assessed to make this determination within the most recent amendments, the Board does not feel that would sufficiently cover the costs associated with this work.

The most recent amendments do not address policy concerns of liability and risk. The Board would need additional legal protections so that a pre-applicant cannot sue or take legal action against the Board based on a determination.

-- END --