

**ADDENDUM TO THE MEETING MATERIALS
FOR THE MEETING OF THE BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
May 2-3, 2022**

VI. Legislation

- B. Discussion of Legislation for 2022 (Possible Action)
 - 2. AB 1662 (Gipson) Licensing boards: disqualification from licensure:
criminal convictions.

This addendum replaces Pages 30 through 36 of the previously-published meeting materials.

AB 1662 (Gipson, D-Gardena)

Licensing boards: disqualification from licensure: criminal conviction.

Status/History: 4/27/2022 – Amended; re-referred to Committee on Appropriations.

Location: 4/29/2022 – Committee on Appropriations

Introduced: 1/18/2022

Last Amended: 4/27/2022

Board Position: Oppose Unless Amended (as of 3/7/2022)

Board Staff Analysis: 4/29/2022

Bill Summary: Existing law provides for the licensure and regulation of various professions by boards within the Department of Consumer Affairs and 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.

As amended on April 27, 2022, this bill would add to a new section to the Business and Professions Code to require a board to establish a process by which prospective applicants may request a preapplication determination as to whether their criminal history could be cause for denial of a completed application for licensure by the board. The bill would provide that the preapplication determination, among other things, may be requested by the prospective applicant at any time prior to the submission of an application and would require the board to include specified written information regarding the criteria used to evaluate criminal history and how the prospective applicant may challenge a denial by the board. The bill would provide that a preapplication determination does not constitute a denial or disqualification of an application and would prohibit requiring a preapplication determination for licensure or for participation in any education or training program. The bill would require a board to publish information regarding its process for requesting a preapplication determination on its internet website and authorize a board to charge a fee, as specified, to be deposited by the board into the appropriate fund and available only upon appropriation by the Legislature.

Affected Laws: An act to add Section 480.7 of the Business and Professions Code, relating to professions and vocations.

Staff Comment: This bill would allow individuals who have been convicted of a crime to submit information regarding the conviction to the Board and request a determination as to whether or not the conviction would be grounds for denial of the license prior to the individual actually submitting an application for licensure and prior to paying any application fee. The bill would require the Board to determine if the individual may be denied licensure based on the information submitted and to notify the individual in writing of the determination.

At its March 7, 2022, meeting, the Board took a position of “Oppose Unless Amended” on AB 1662. The Board has concerns that the language in AB 1662 does not provide sufficient clarity that any preapplication determination by the Board about the effect a conviction may have on a person’s ability to obtain a license must necessarily be an initial, non-binding determination. The

bill authorizes prospective applicants, before obtaining the education or experience required for licensure, to seek a determination from the Board regarding whether or not a conviction would disqualify them from licensure. However, the bill does not address what may happen if circumstances change between the time of the preapplication determination and the time when the application is actually submitted. A copy of the letter that was sent to the author detailing these concerns is included for reference.

Based on recommendations from the Assembly Business and Professions Committee at the hearing on the bill on April 26, 2022, the bill was amended. As amended on April 27, 2022, a new section would be added to the Business and Professions Code that would require the Board to establish a process by which prospective applicants may request a preapplication determination as to whether their criminal history could be cause for denial of a completed application for licensure by the Board pursuant to Section 480. Under this process, the individual would be allowed to request a preapplication determination at any time prior to the submission of a completed application and would require the individual to be fingerprinted for a criminal history background check. Furthermore, if the Board were to determine that the applicant's criminal history could be cause for denial of a completed application, then the Board must provide the applicant, in writing, with the Board's substantial relationship criteria for determining that a crime is substantially related to the profession; with information on how the applicant can obtain a copy of their complete criminal history and question the accuracy or completion of it as provided in the Penal Code; that the applicant would have the right to appeal the Board's decision; and with information regarding the criteria for rehabilitation that the Board. The Board would also be required to provide information regarding the process on its website. Additionally, the Board would be allowed to charge a fee to the applicant for the preapplication determination in an amount not to exceed the lesser of \$50 or the reasonable cost of administering this section.

A copy of the Assembly Business and Professions Committee analysis of the bill is included for reference.

Although the amended language does not explicitly state that the preapplication determination is non-binding, it does indicate that the Board must advise the applicant if the criminal history could be grounds for denial, and, if so, that that applicant would have the right to appeal the denial and what evidence of rehabilitation the Board would consider. The amendments do not address what would happen should a conviction occur between the time of the preapplication determination and submittal of the completed application. Presumably, the Board would still be able to consider any new convictions under the provisions of Section 480 of the Code, but this is not expressly stated.

Staff Recommendation: The Board needs to decide if the amendments made to AB 1662 on April 27, 2022, are sufficient to remove its opposition.

AMENDED IN ASSEMBLY APRIL 27, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1662

Introduced by Assembly Member Gipson

January 18, 2022

An act to ~~amend Section 480 of~~ *add Section 480.7* to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1662, as amended, 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.~~ *require a board to establish a process by which prospective applicants may request a preapplication determination as to whether their criminal history could be cause for denial of a completed application for licensure by the board. The bill*

would provide that the preapplication determination, among other things, may be requested by the prospective applicant at any time prior to the submission of an application and would require the board to include specified written information regarding the criteria used to evaluate criminal history and how the prospective applicant may challenge a denial by the board. The bill would provide that a preapplication determination does not constitute a denial or disqualification of an application and would prohibit requiring a preapplication determination for licensure or for participation in any education or training program. The bill would require a board to publish information regarding its process for requesting a preapplication determination on its internet website and authorize a board to charge a fee, as specified, to be deposited by the board into the appropriate fund and 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 480.7 is added to the Business and
- 2 Professions Code, to read:
- 3 480.7. (a) A board shall establish a process by which
- 4 prospective applicants may request a preapplication determination
- 5 as to whether their criminal history could be cause for denial of
- 6 a completed application for licensure by the board pursuant to
- 7 Section 480.
- 8 (b) The process required by subdivision (a) shall allow for
- 9 prospective applicants to request a preapplication determination
- 10 at any time prior to the submission of a completed application
- 11 through any method through which the board allows for the
- 12 submission of completed applications.
- 13 (c) (1) If a prospective applicant requests a preapplication
- 14 determination, a board designated in subdivision (b) of Section
- 15 144 may require a prospective applicant to furnish a full set of
- 16 fingerprints for purposes of conducting a criminal history record
- 17 check as part of a preapplication determination.
- 18 (2) Prospective applicants seeking a preapplication
- 19 determination shall be considered applicants for purposes of
- 20 Section 144.

1 (3) A board that receives criminal history information as part
2 of a preapplication determination is not required to request
3 subsequent arrest notification service from the Department of
4 Justice pursuant to Section 11105.2 of the Penal Code.

5 (d) If a prospective applicant requests a preapplication
6 determination, a board issuing a license pursuant to Chapter 3
7 (commencing with Section 5500), Chapter 3.5 (commencing with
8 Section 5615), Chapter 10 (commencing with Section 7301),
9 Chapter 20 (commencing with Section 9800), or Chapter 20.3
10 (commencing with Section 9880), of Division 3, or Chapter 3
11 (commencing with Section 19000) or Chapter 3.1 (commencing
12 with Section 19225) of Division 8 may require prospective
13 applicants for licensure under those chapters to disclose criminal
14 conviction history as part of a preapplication determination.

15 (e) A preapplication determination shall not constitute the denial
16 or disqualification of an application for purposes of Section 489
17 or any other law.

18 (f) Upon making a preapplication determination finding that a
19 prospective applicant's criminal history could be cause for denial
20 of a completed application, a board shall provide the prospective
21 applicant with all of the following in writing:

22 (1) A summary of the criteria used by the board to consider
23 whether a crime is considered to be substantially related to the
24 qualifications, functions, or duties of the business or profession it
25 regulates consistent with Section 481.

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

30 (3) That the applicant would have the right to appeal the board's
31 decision.

32 (4) Any existing procedure the board has for the prospective
33 applicant would have to challenge the decision or to request
34 reconsideration following the denial of a completed application,
35 including a copy of the criteria relating to rehabilitation formulated
36 under Section 482.

37 (g) A board shall publish information regarding its process for
38 requesting a preapplication determination on its internet website.

1 (h) A preapplication determination shall not be a requirement
2 for licensure or for participation in any education or training
3 program.

4 (i) Pursuant to this section, a board may charge a fee to a
5 prospective applicant in an amount not to exceed the lesser of fifty
6 dollars (\$50) or the reasonable cost of administering this section.
7 The fee shall be deposited by the board into the appropriate fund
8 and shall be available only upon appropriation by the Legislature.

9 (j) For purposes of this section, "board" includes each licensing
10 entity listed in Section 101, excluding the Bureau for Private
11 Postsecondary Education and the State Athletic Commission, and
12 the Department of Real Estate.

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

15 480. (a) Notwithstanding any provision of this code, a board
16 may deny a license regulated by this code on the grounds that the
17 applicant has been convicted of a crime or has been subject to
18 formal discipline only if either of the following conditions are met:

19 (1) The applicant has been convicted of a crime within the
20 preceding seven years from the date of application that is
21 substantially related to the qualifications, functions, or duties of
22 the business or profession for which the application is made,
23 regardless of whether the applicant was incarcerated for that crime,
24 or the applicant has been convicted of a crime that is substantially
25 related to the qualifications, functions, or duties of the business or
26 profession for which the application is made and for which the
27 applicant is presently incarcerated or for which the applicant was
28 released from incarceration within the preceding seven years from
29 the date of application. However, the preceding seven-year
30 limitation shall not apply in either of the following situations:

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

35 (B) The applicant was convicted of a financial crime currently
36 classified as a felony that is directly and adversely related to the
37 fiduciary qualifications, functions, or duties of the business or
38 profession for which the application is made, pursuant to
39 regulations adopted by the board, and for which the applicant is
40 seeking licensure under any of the following:

- 1 ~~(i) Chapter 6 (commencing with Section 6500) of Division 3.~~
- 2 ~~(ii) Chapter 9 (commencing with Section 7000) of Division 3.~~
- 3 ~~(iii) Chapter 11.3 (commencing with Section 7512) of Division~~
- 4 ~~3.~~
- 5 ~~(iv) Licensure as a funeral director or cemetery manager under~~
- 6 ~~Chapter 12 (commencing with Section 7600) of Division 3.~~
- 7 ~~(v) Division 4 (commencing with Section 10000).~~

8 ~~(2) The applicant has been subjected to formal discipline by a~~
9 ~~licensing board in or outside California within the preceding seven~~
10 ~~years from the date of application based on professional misconduct~~
11 ~~that would have been cause for discipline before the board for~~
12 ~~which the present application is made and that is substantially~~
13 ~~related to the qualifications, functions, or duties of the business or~~
14 ~~profession for which the present application is made. However,~~
15 ~~prior disciplinary action by a licensing board within the preceding~~
16 ~~seven years shall not be the basis for denial of a license if the basis~~
17 ~~for that disciplinary action was a conviction that has been dismissed~~
18 ~~pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425~~
19 ~~of the Penal Code or a comparable dismissal or expungement.~~

20 ~~(b) Notwithstanding any provision of this code, a person shall~~
21 ~~not be denied a license on the basis that the person has been~~
22 ~~convicted of a crime, or on the basis of acts underlying a conviction~~
23 ~~for a crime, if that person has obtained a certificate of rehabilitation~~
24 ~~under Chapter 3.5 (commencing with Section 4852.01) of Title 6~~
25 ~~of Part 3 of the Penal Code, has been granted clemency or a pardon~~
26 ~~by a state or federal executive, or has made a showing of~~
27 ~~rehabilitation pursuant to Section 482.~~

28 ~~(c) Notwithstanding any provision of this code, a person shall~~
29 ~~not be denied a license on the basis of any conviction, or on the~~
30 ~~basis of the acts underlying the conviction, that has been dismissed~~
31 ~~pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425~~
32 ~~of the Penal Code, or a comparable dismissal or expungement. An~~
33 ~~applicant who has a conviction that has been dismissed pursuant~~
34 ~~to Section 1203.4, 1203.4a, 1203.41, or 1203.42 of the Penal Code~~
35 ~~shall provide proof of the dismissal if it is not reflected on the~~
36 ~~report furnished by the Department of Justice.~~

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

1 ~~(e) A board may deny a license regulated by this code on the~~
2 ~~ground that the applicant knowingly made a false statement of fact~~
3 ~~that is required to be revealed in the application for the license. A~~
4 ~~board shall not deny a license based solely on an applicant's failure~~
5 ~~to disclose a fact that would not have been cause for denial of the~~
6 ~~license had it been disclosed.~~

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

9 ~~(1) A board issuing a license pursuant to Chapter 3 (commencing~~
10 ~~with Section 5500), Chapter 3.5 (commencing with Section 5615),~~
11 ~~Chapter 10 (commencing with Section 7301), Chapter 20~~
12 ~~(commencing with Section 9800), or Chapter 20.3 (commencing~~
13 ~~with Section 9880), of Division 3, or Chapter 3 (commencing with~~
14 ~~Section 19000) or Chapter 3.1 (commencing with Section 19225)~~
15 ~~of Division 8 may require applicants for licensure under those~~
16 ~~chapters to disclose criminal conviction history on an application~~
17 ~~for licensure.~~

18 ~~(2) Except as provided in paragraph (1), a board shall not require~~
19 ~~an applicant for licensure to disclose any information or~~
20 ~~documentation regarding the applicant's criminal history. However,~~
21 ~~a board may request mitigating information from an applicant~~
22 ~~regarding the applicant's criminal history for purposes of~~
23 ~~determining substantial relation or demonstrating evidence of~~
24 ~~rehabilitation, provided that the applicant is informed that~~
25 ~~disclosure is voluntary and that the applicant's decision not to~~
26 ~~disclose any information shall not be a factor in a board's decision~~
27 ~~to grant or deny an application for licensure.~~

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

31 ~~(A) The denial or disqualification of licensure.~~

32 ~~(B) Any existing procedure the board has for the applicant to~~
33 ~~challenge the decision or to request reconsideration.~~

34 ~~(C) That the applicant has the right to appeal the board's~~
35 ~~decision.~~

36 ~~(D) The processes for the applicant to request a copy of the~~
37 ~~applicant's complete conviction history and question the accuracy~~
38 ~~or completeness of the record pursuant to Sections 11122 to 11127~~
39 ~~of the Penal Code.~~

1 ~~(g) (1) A prospective applicant that has been convicted of a~~
2 ~~crime may submit to a board, by mail or email, and at any time,~~
3 ~~including before obtaining any training or education required for~~
4 ~~licensure by that board or before paying any application fee, a~~
5 ~~request for a preapplication determination that includes information~~
6 ~~provided by the prospective applicant regarding their criminal~~
7 ~~conviction.~~

8 ~~(2) Upon receiving a request submitted pursuant to paragraph~~
9 ~~(1), a board shall determine if the prospective applicant may be~~
10 ~~disqualified from licensure by the board based on the information~~
11 ~~submitted with the request, and deliver the determination by mail~~
12 ~~or email to the prospective applicant within a reasonable time.~~

13 ~~(h) (1) For a minimum of three years, each board under this~~
14 ~~code shall retain application forms and other documents submitted~~
15 ~~by an applicant, any notice provided to an applicant, all other~~
16 ~~communications received from and provided to an applicant, and~~
17 ~~criminal history reports of an applicant.~~

18 ~~(2) Each board under this code shall retain the number of~~
19 ~~applications received for each license and the number of~~
20 ~~applications requiring inquiries regarding criminal history. In~~
21 ~~addition, each licensing authority shall retain all of the following~~
22 ~~information:~~

23 ~~(A) The number of applicants with a criminal record who~~
24 ~~received notice of denial or disqualification of licensure.~~

25 ~~(B) The number of applicants with a criminal record who~~
26 ~~provided evidence of mitigation or rehabilitation.~~

27 ~~(C) The number of applicants with a criminal record who~~
28 ~~appealed any denial or disqualification of licensure.~~

29 ~~(D) The final disposition and demographic information,~~
30 ~~consisting of voluntarily provided information on race or gender,~~
31 ~~of any applicant described in subparagraph (A), (B), or (C).~~

32 ~~(3) (A) Each board under this code shall annually make~~
33 ~~available to the public through the board's internet website and~~
34 ~~through a report submitted to the appropriate policy committees~~
35 ~~of the Legislature deidentified information collected pursuant to~~
36 ~~this subdivision. Each board shall ensure confidentiality of the~~
37 ~~individual applicants.~~

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

- 1 ~~(i) “Conviction” as used in this section shall have the same~~
- 2 ~~meaning as defined in Section 7.5.~~
- 3 ~~(j) This section does not in any way modify or otherwise affect~~
- 4 ~~the existing authority of the following entities in regard to~~
- 5 ~~licensure:~~
- 6 ~~(1) The State Athletic Commission.~~
- 7 ~~(2) The Bureau for Private Postsecondary Education.~~
- 8 ~~(3) The California Horse Racing Board.~~

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS
Marc Berman, Chair
AB 1662 (Gipson) – As Introduced January 18, 2022

SUBJECT: Licensing boards: disqualification from licensure: criminal conviction.

SUMMARY: Requires boards under the Department of Consumer Affairs (DCA) to allow for prospective applicants who have been convicted of a crime to request a preapplication determination as to whether that crime would disqualify the prospective applicant from licensure.

EXISTING LAW:

- 1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
- 2) Defines “board” as also inclusive of “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” “program,” and “agency.” (BPC § 22)
- 3) Enumerates various regulatory boards, bureaus, committees, and commissions under the DCA’s jurisdiction. (BPC § 101)
- 4) Provides that all boards under 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)
- 5) Provides that the withdrawal of a license application after it has been filed with a board shall not, unless the board has consented in writing to such withdrawal, prevent the board from instituting or continuing a proceeding against the applicant for the denial. (BPC § 118)
- 6) 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)
- 7) 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)
- 8) Defines “license” as also inclusive of any certificate, registration or other means to engage in a business or profession regulated by the Business and Professions Code. (BPC § 477)
- 9) 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))

- 10) 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))
- 11) 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))
- 12) 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))
- 13) 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))
- 14) 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))
- 15) 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))

- 16) Requires boards under the DCA to retain and report data relating to license applicants, applications, and denials for prior criminal convictions or formal discipline. (BPC § 480(g))
- 17) 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, which must include all the following:
 - a) The nature and gravity of the offense.
 - b) The number of years elapsed since the date of the offense.
 - c) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.

(BPC § 481)

- 18) 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)
- 19) Provides that no person applying for licensure under a DCA board shall be required to submit any attestation by other persons to their good moral character. (BPC § 484)
- 20) 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)
- 21) 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:

- 1) Allows for an applicant who has been convicted of a crime to submit to a board, by mail or email, and at any time, including before obtaining any training or education required for licensure by that board or before paying any application fee, a request for a preapplication determination that includes information provided by the prospective applicant regarding their criminal conviction.
- 2) Requires a board that has received a request for a preapplication determination to determine if the prospective applicant may be disqualified from licensure based on the information submitted with the request, and deliver the determination by mail or email to the prospective applicant within a reasonable time.

FISCAL EFFECT: Unknown; this bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

Purpose. This bill is sponsored by the **Council of State Governments Justice Center**.

According to the author:

“AB 1662 is focused on getting people back to work, improving access to licensed professions, and eliminating barriers that keep individuals who are going through the re-entry process from obtaining an occupational license. We are talking about an untapped pool of job talent who are ready to work and contribute to society but have historically faced the most barriers at a very basic level.

“This is about opportunity and hope for those that have been held accountable and paid their dues and deserve a second chance. One of the main barriers that folks face when trying to apply for a licensed profession is the expensive tuition that comes with training and courses one needs to take just to find out that they were denied due to their criminal record. This bill would provide notice on whether their record might disqualify them from receiving an occupational license in the future, prior to financial and educational investment toward any program.”

Background.

Overview of Licensure in California. California has provided for the licensure of regulated professionals since the early days of statehood. In 1876, the Legislature enacted the original Medical Practice Act, which was revised two years later to delegate licensing authority to the first three regulatory boards: the Medical Board, Eclectic Board, and Homeopathic Board. By the end of the 1920s, seven additional boards had been established to regulate pharmacists, dentists, optometrists, veterinarians, barbers, accountants, and embalmers. These boards were placed under the oversight of a Department of Vocational and Professional Standards, which would become the Department of Consumer Affairs in 1965. Today, the DCA oversees 36 boards, bureaus, and other regulatory bodies.

As a department within an agency of the state government, the DCA is led by a director appointed by the Governor. While the regulatory boards under the DCA’s oversight are considered semi-autonomous, the Director of Consumer Affairs does wield considerable influence over board policymaking. For example, the director has the power to review and disapprove formal rulemaking, may conduct audits and reviews of board activities, and approves budget change proposals prior to their submission to the Department of Finance. The powers of the director are then further subject to the authority of the Secretary of the Business, Consumer Services, and Housing Agency and, ultimately, the Governor.

The practice act for each profession licensed by a regulatory board under the DCA typically includes sunset provisions providing for regular review by the Legislature. At staggered intervals averaging four years, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions, and Economic Development jointly prepare a comprehensive background paper for each entity, hold public hearings, recalculate the balance of consumer protection and regulatory burden, and make recommendations to enact any necessary reforms. In rare instances, entities are abolished, reduced, or consolidated when inefficiencies are identified or when public benefit is deemed insufficient to justify regulation.

Board Discretion to Deny Applications for Licensure. Due to the unique nature of each individual profession licensed and regulated by entities under the DCA, the various professional practice acts contain their own standards and enforcement criteria for individuals applying for or in receipt of special occupational privileges from the state. However, there are some umbrella statutes that preemptively govern the discretion of these regulatory bodies generally. Specifically, BPC § 480 governs the authority of regulatory boards to deny license applications based on an applicant's prior criminal conviction or formal discipline.

Historically boards and bureaus under the DCA were criticized for how they used their previously broad discretion to deny licensure to applicants with criminal histories. In its report *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records*, the National Employment Law Project (NELP) discussed the draconian nature of barriers to occupational entry based on criminal history. NELP's report referred to "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.

During its 2017 sunset review, the Assembly Committee on Business and Professions discussed barriers to licensure generally in its background paper for the DCA. Specifically, the committee considered how criminal convictions eligible for license disqualification in California were limited in the sense that they must be "substantially related" to the profession into which the license allows entry. Concern was expressed that there was a "serious lack of clarity for applicants as to what 'substantially related' means and this determination is often left to the discretion of individual boards." The Committee's was for the DCA to take steps to improve transparency and consistency in the use of applicants' criminal histories by boards and bureaus.

Assembly Bill 2138 (Chiu/Low, Chapter 995, Statutes of 2018), the Fair Chance Licensing Act, was subsequently introduced and signed into law, going into effect on July 1, 2020. The bill made substantial reforms to the application process under BPC § 480 for individuals with criminal records seeking licensure from a board under the DCA. Under AB 2138, an application may only be denied on the basis of prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. The bill further prohibited boards that already require fingerprint background checks from requiring self-disclosure of prior misconduct from the applicant.

One of the key reforms made by AB 2138 was language providing for a seven-year "washout" for prior misconduct. Under the bill, a criminal conviction or formal disciplinary action may only be cause for denial if it occurred within seven years prior to the application. This provision does have several exceptions—for example, all serious and violent felonies can be cause for an application denial with no limitations. Certain boards are authorized to deny an application for specified financial crimes regardless of age. Finally, criminal convictions for which the applicant was required to register as a sex offender were exempted from the washout; however, this exemption does not include Tier 3 sex offenses, which are the collection of offenders who may be required to register but who present the lowest risk to the public.

AB 2138 also requires the collection of data related to applications and denials for applicants with prior criminal histories. Each board is required to report the number of applications requiring inquiries regarding criminal history as well as the number of applicants who were denied and appealed or provided evidence of mitigation or rehabilitation, and the final disposition and voluntarily provided demographic information, including race and gender.

The intention of this bill is to allow applicants with criminal histories to find out in advance whether their record would be cause for denial of a license under BPC § 480 and the requirements of AB 2138. The author believes that this would be valuable for those who do not wish to invest considerable time and money in meeting other prerequisites for licensure (such as education, training, and examination requirements) if there remains a chance they'd nevertheless be denied following a background check. By requiring boards to make a preapplication determination as to an applicant's criminal history, the author believes more individuals with prior convictions will seek economic opportunity through licensure, which is meaningful both as a means of reducing recidivism and as a public policy viewed through an equity lens.

Current Related Legislation. AB 1636 (Weber) would allow a board to deny an application for licensure based on prior formal discipline that occurred earlier than seven years for an act of sexual abuse, misconduct, or relations with a patient. *This bill is pending in the Assembly Committee on Appropriations.*

Prior Related Legislation. AB 2138 (Chiu/Low, Chapter 995, Statutes of 2018) limited the authority of boards to deny a license application for prior misconduct and required the collection and reporting of data relating to license denials.

ARGUMENTS IN SUPPORT:

This bill is sponsored by the **Council of State Governments Justice Center (CSG)**. CSG references the passage of AB 2138 calls "a model state for many other states looking to eliminate various barriers to employment for formerly incarcerated individuals." CSG writes that this bill would build upon that law by "authorizing pre-application eligibility determinations for prospective applicants to know whether their record is disqualifying before investing in the training and education required for a license." CSG argues that "as a fair chance licensing front-runner, California has demonstrated that thoughtful targeted policies can significantly expand economic mobility without jeopardizing public safety."

The **Institute for Justice** also supports this bill, writing: "Building on California's 2018 'Fair Chance Licensing' law would help to further eliminate the deterrent effect of licensing barriers on workers who are unsure if their conviction will be disqualifying, reduce recidivism by opening additional stable employment opportunities, provide businesses with qualified workers and save taxpayer incarceration and public benefits costs. Currently, 20 states have enacted such policy in recent years: Arizona, Arkansas, Idaho, Iowa, Indiana, Kansas, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Nevada, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, West Virginia and Wisconsin. "

ARGUMENTS IN OPPOSITION:

The **Board for Professional Engineers, Land Surveyors, and Geologists** opposes this bill unless amended, arguing that the bill "does not provide sufficient clarity that any preapplication determination by the Board about the effect a conviction may have on a person's ability to obtain a license must necessarily be an initial, non-binding determination." The Board writes that "while the Board understands the intent in helping people with convictions determine whether to continue on their chosen career path, the Board believes it is important to make it clear that any preapplication determination is non-binding and could change to the applicant's detriment or benefit over time."

The **Dental Hygiene Board of California** also opposes this bill, writing: “The Board understands the time and expense a prospective applicant may incur during training in a prospective licensing field. However, the bill would lead to an increased workload and cost for the Board to pre-review possible applicants without compensation for Board resources. The time and resources used for the pre-application review would be about the same as someone who applied without a conviction. In addition, if the Board must pre-review or approve an applicant without compensation and an additional conviction were to occur prior to licensing, it is possible the pre-approval would be rescinded, and licensure denied depending on vetting the new conviction.”

POLICY ISSUE(S) FOR CONSIDERATION:

Potential for Unreliable Determinations. Currently, this bill requires a board to respond to a request from a prospective applicant for a preapplication determination as to whether they *may* be disqualified from licensure based on “information provided by the prospective applicant regarding their criminal conviction.” The bill allows this information to be submitted by mail or email. This presumably means that any prior criminal or disciplinary history would be narratively disclosed directly by the potential applicant to the board.

This form of self-disclosure was generally prohibited by AB 2138 for boards that require applicants to undergo a fingerprint background check. This was in part due to concern over instances where applicants underestimate the inclusivity of what crimes or acts would disqualify them and fail to voluntarily disclose that information. This lack of disclosure could itself be grounds to deny the application for licensure. The practice of requiring self-disclosure by applicants and then denying an application based on an applicant’s inadequate self-incrimination is frequently regarded as the “candor trap.”

Another issue with self-disclosure of criminal history by an applicant to a board is that the applicant’s recollection or characterization of a prior offense may not conform to how the offense would be represented on a rap sheet. This could lead to a disclosed conviction being either understated, leading to a false negative on its potential for disqualification, or exaggerated, leading to a false positive. While self-disclosure is still the practice for the small number of boards that do not require fingerprint background checks, for those that do, the author may wish to instead require that criminal history be disclosed through the same manner that it will be as part of a completed application.

Additionally, it should be made clear to applicants who are notified that an offense they disclosed as part of a preapplication determination would potentially lead to a denial are not necessarily doomed. Boards are required under AB 2138 to offer an appeals process for all denials, and there are various options for demonstrating rehabilitation or having a prior conviction dismissed or expunged. Boards should provide this information to applicants as part of their response.

IMPLEMENTATION ISSUES:

Currently, this bill does not allow boards to charge a fee to cover workload costs associated with offering preapplication determinations. Because all boards are special funded, this could lead to cost pressures distributed across other fees currently being charged. The author may wish to allow boards to charge up to a certain amount in fees to cover the costs of implementing the bill.

AMENDMENTS:

- 1) To improve statutory clarity, relocate the bill's provisions to a newly established section of the Business and Professions Code.
- 2) To enhance the reliability of determinations made by boards that will ultimately require fingerprint background checks when reviewing a completed application, allow for those boards to require a prospective applicant to furnish a full set of fingerprints as part of their request for a preapplication determination.
- 3) To ensure a preapplication determination does not preclude an applicant from submitting a completed application, add language clarifying that an adverse response from a board regarding an offense disclosed as part of a preapplication determination does not constitute a denial for purposes of any law prohibiting reapplication when in a specified time frame.
- 4) To ensure potential applicants informed about options available to them in the event that their preapplication determination reveals the potential for a denial based on a prior offense, require a board to provide the potential applicant with the following information in writing:
 - a. A summary of the criteria used by the board to consider whether a crime is considered to be substantially related to the qualifications, functions, or duties of the business or profession it regulates.
 - b. 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.
 - c. Any existing procedure the board has for the prospective applicant would have to challenge the decision or to request reconsideration following the denial of a completed application, including a copy of the criteria relating to rehabilitation.
 - d. That the applicant would have the right to appeal the board's decision.
- 5) To clarify that a preapplication determination is not intended to be required of applicants under any circumstance, include language expressly stating that a preapplication determination shall not be a requirement for licensure or participation in any education or training program.
- 6) To increase awareness of the availability for potential applicants to receive a preapplication determination, require boards to place information regarding the process on their websites.
- 7) To allow boards to recover costs directly associated with implementing the bill, authorize the assessment of a fee in an amount up to no more than \$50, not to exceed the reasonable cost of implementing the bill.

REGISTERED SUPPORT:

Council of State Governments Justice Center (*Sponsor*)
Institute for Justice
Little Hoover Commission

REGISTERED OPPOSITION:

Board for Professional Engineers, Land Surveyors, and Geologists
Dental Hygiene Board of California
Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board

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