

executive, or has made a showing of rehabilitation pursuant to BPC §482. (BPC §480(b))

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

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

This Bill:

- 1) Requires DCA boards to establish a process for prospective applicants to request a preapplication determination at any time prior to submitting an application, regarding whether their criminal history could be cause for denial of licensure under BPC §480. (BPC §480.7(a) and (b))
- 2) If requesting a preapplication determination, the board may require the prospective applicant to provide a full set of fingerprints for purposes of conducting a criminal history record check. (BPC §480.7(c))
- 3) Specifies that the board is not required to request subsequent arrest notifications from the Department of Justice for preapplication determinations. (BPC§480.7(c))
- 4) Provides that a preapplication determination does not constitute a denial or disqualification of an application. (BPC §480.7(e))
- 5) If a board makes a preapplication determination finding that the prospective applicant's criminal history could be cause for denial, the board must provide the prospective applicant with all of the following in writing (BPC §480.7(f)):
 - a. A summary of the board's criteria to consider whether a crime is substantially related to the qualifications, functions, or duties of the profession it regulates.
 - b. The process for an applicant to request a copy of their complete conviction history and question its accuracy or completeness.
 - c. That the applicant would have the right to appeal the board's decision.
 - d. A copy of the board's criteria for rehabilitation, as well as any existing procedure the board has for the prospective applicant to challenge the decision or request reconsideration once their application is denied.
- 6) Requires boards to publish information regarding the process for requesting a preapplication determination on their internet websites. (BPC §480.7(g))
- 7) Prohibits a preapplication determination from being required for licensure or for participation in any education or training program. (BPC §480.7(h))

- 8) Permits a board to charge a fee for a preapplication determination. The fee may not exceed the lesser of \$50 or the reasonable cost of administration. (BPC §480.7(i))

Comment:

- 1) **Author’s Intent.** The author’s office states that they are seeking to provide a “pre-application determination” for prospective applicants of occupational licenses to know whether their criminal record would disqualify them before the invest in expensive training and education toward a license. They state that 20 other states have enacted similar policies.
- 2) **Accuracy of the Predeterminations.** Recent amendments to this bill require preapplicants to submit fingerprints, which will help to ensure that the Board receives accurate information about past criminal convictions. However, there are, certain factors not entirely addressed that could affect the accuracy of the predeterminations. They would not take into account future rehabilitation efforts of the applicant, or the time passed since the conviction at the point of future application. (If the conviction is over 7 years old when they apply for licensure, the Board may not deny based on it unless it was for a serious felony.) In addition, if additional convictions happen between the time of the predetermination and the application for licensure, that will affect the accuracy of the predetermination.
- 3) **Fiscal Impact.** This bill does allow DCA boards to charge a fee of up to \$50 to cover the cost of the preapplication determinations. Staff believes the Board would need two new full-time positions: one office technician to intake and track requests, and one staff services analyst to review the request and documentation, make a determination, and prepare the response.
- 4) **Need for Regulations.** The Board would likely need to run regulations to implement this bill in order to establish a fee for the preapplication determinations, and in order to define a formal process.
- 5) **Board Denials Based on Convictions.** The chart below summarizes the Board’s application denials from Fiscal Year 2015-16 through Fiscal Year 2018-2019.

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

Total Denied Based on Criminal History	19	63	68	47	197
Denied Based on Other Acts	2	15	17	17	51
Total Denials	21	78	85	64	248
Failure to Disclose Denials	1	16	13	10	40

Applicants who are denied have a right to a hearing under BPC §485. If they wish to have a hearing, they must make a written request to the Board within 60 days.

6) **Current Outreach Materials.** The Board has developed an outreach document to help applicants with a past condition or past disciplinary process understand how that will affect the application process for them. This document is on the Board’s website at the following link: https://bbs.ca.gov/pdf/ab2138_faqs.pdf

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) **Recommended Position.** The Policy and Advocacy Committee considered a prior version of this bill at its April 20, 2022 meeting. The Committee decided not to recommend a position at that time, and to instead reconsider the bill at the Board meeting. The bill has been significantly amended since the Policy and Advocacy Committee meeting.

9) **Support and Opposition**

Support:

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

Opposition:

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

10) History

2022

04/27/22 Read second time and amended.

04/26/22 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 15. Noes 1.) (April 26).

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

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

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

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

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:~~

- ~~(i) Chapter 6 (commencing with Section 6500) of Division 3.~~
- ~~(ii) Chapter 9 (commencing with Section 7000) of Division 3.~~
- ~~(iii) Chapter 11.3 (commencing with Section 7512) of Division~~

~~3.~~

~~(iv) Licensure as a funeral director or cemetery manager under Chapter 12 (commencing with Section 7600) of Division 3.~~

- ~~(v) Division 4 (commencing with Section 10000).~~

~~(2) The applicant has been subjected to formal discipline by a licensing board in or outside California within the preceding seven years from the date of application 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. However, prior disciplinary action by a licensing board within the preceding seven years shall not be the basis for denial of a license if the basis for that disciplinary action was a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a comparable dismissal or expungement.~~

~~(b) Notwithstanding any provision of this code, a person shall not be denied a license 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 under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 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 Section 482.~~

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

~~(d) Notwithstanding any provision of this code, a board shall not deny 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.~~

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.~~

O