

BUREAU OF HOUSEHOLD GOODS AND SERVICES
Home Furnishings and Thermal Insulation Licenses

FINAL STATEMENT OF REASONS

Hearing Date: None.

Subject Matter of Proposed Regulations: Criminal Conviction Substantial Relationship and Rehabilitation Criteria

Sections Affected: California Code of Regulations (CCR), Title 4, Division 3, Article 15, Sections 1380 and 1381.

Request for Early Effective Date

As the provisions of AB 2138 go into effect July 1, 2020, the Bureau requests an effective date of July 1, 2020 (or on filing thereafter) to coincide with statute.

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The initial comment period for this rulemaking was from February 21, 2020 to April 6, 2020, during which no comments were received by the Bureau of Household Goods and Services (Bureau).

The Bureau modified the proposed regulatory text as follows:

1. CCR, title 4, section 1380:
 - a. Subsection (b): Inserted “all of” before “the following criteria” to reflect the statutory requirement in Business and Professions Code (BPC) section 481, subdivision (b).
 - b. Subsection (b)(1) through (3): Made technical punctuation corrections.
 - c. Authority and Reference: Made minor revisions to delete inapplicable authority sections and added statutes relevant to substantial relationship criteria.
2. CCR, title 4, section 1381:
 - a. Subsection (a): Made technical revisions. Revised the phrase “the applicant was convicted of a crime” to instead read “the applicant has been convicted of a crime” to conform the proposed regulation to the

language used in BPC section 480, subdivision (a), as added by AB 2138. Struck “and is presently eligible for a license” because the meaning of the term “presently” was unclear to the regulated public and the phrase was determined to be unnecessary given the other clarifying modifications to the proposal.

- b. Subsection (b): Removed and restated the subsection language to clarify this subsection sets forth the rehabilitation criteria the Bureau will apply to applicants with a criminal conviction who have not completed the criminal sentence without a violation of parole or probation, applicants with a criminal conviction who did not make a showing of rehabilitation under subsection (a), proceedings in which the denial is based on professional misconduct (as that term is used under new BPC section 480), and proceedings based on a disciplinary action as described in BPC section 141. These clarifications are necessary to inform the public, applicants, and Bureau staff that rehabilitation criteria will be considered for all matters, regardless of whether the grounds for stem from BPC section 480. The clarifications promote equity and fairness by ensuring all applicants will have the ability to submit rehabilitation evidence to the Bureau for its consideration, which is in keeping with the legislative intent of AB 2138. The clarifications also provide consistency with other DCA board regulations.
- c. Subsection (b)(1) through (3): Added “professional misconduct” for consistent use with the term in CCR section 1380 and to differentiate “professional misconduct” as a ground provided under new BPC section 480, subsection (a)(2), from other “acts.” Added “disciplinary actions” for consistent use with the term in CCR section 1381(b) and BPC section 141 and to differentiate “disciplinary actions” as a ground for revocation or suspension provided under BPC section 141 from other “acts.”
- d. Subsection (b)(5): Replaced the phrase “subsections (a)(1)-(a)(5)” with “subsections (a)(1) through (a)(5)” to more clearly articulate that the phrase refers to a series of subsections, all of which are applicable. Changing a hyphen to the word “through” shows the list is inclusive.

The above-mentioned changes are non-substantive changes do not affect the purpose or the scope of the originally proposed regulatory changes. These changes have been incorporated into the Order of Adoption submitted with this final rulemaking file.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The proposed regulations may affect small businesses that would otherwise not qualify for a license, however, the Bureau is unaware of the number of potential small businesses that would be impacted by this regulatory proposal.

Economic Impact Assessment:

To the extent applicants and licensees were convicted of a crime or were previously disciplined, the proposed regulations could impact individual applicants and licensees by authorizing individuals with criminal convictions or professional misconduct disciplinary actions to obtain licensure by the Bureau if they have met the rehabilitative criteria when the criminal convictions or professional misconduct are substantially related as established in the regulatory proposal.

However, because the Bureau historically denies a minimal number of initial applications per year (less than one), the Bureau does not anticipate an increase in the number of new initial licensees resulting from the proposed regulations, and this is not enough licensees to impact small businesses.

Fiscal Impact:

Because the Bureau historically denies a minimal number of applications per year based on substantially related criteria (less than one), no increase in the number of initial applications approved per year is anticipated. As a result, the proposed regulations are not anticipated to increase licensing and/or enforcement costs related to adoption of this proposal.

Anticipated Benefits of this Proposal

The Bureau has determined this proposal may benefit individuals by potentially providing them greater access to licensure. Further, this proposal may reduce criminal recidivism and may provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed businesses, which may benefit individuals living in California. The regulatory proposal does not affect worker safety or the state's environment.

Alternatives Determination

The Bureau has determined that no reasonable alternative to the regulatory proposal it considered or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the regulatory proposal, or would be more cost effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives that were considered and the reason the alternatives were rejected or adopted:

- Option 1: To pursue a regulatory change that requires the Bureau to find rehabilitation if the applicant or licensee completed the terms of their criminal probation or parole. Courts give little weight to the fact that an applicant or licensee did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Bureau believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Bureau rejected this option.
- Option 2: Do nothing, meaning the Bureau would not adopt the regulations. The Bureau opted not to pursue this option because per AB 2138, the Bureau is mandated to adopt proposed regulations by July 1, 2020.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.

Summary of Comments Received During the 45-day Comment Period

The proposed text was made available to the public for comment from February 21, 2020 to April 6, 2020. No public comments were received during this comment period.

Nonduplication Statement - 1 CCR § 12

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as "authority" and "reference" for the proposed regulations and the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code section 11349.1, subdivision (a)(3).