

**Bureau of Household Goods and Services  
Department of Consumer Affairs**

**Initial Statement of Reasons**

**Hearing Date:** No hearing has been scheduled for the proposed action.

**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.

**Background and Statement of the Problem:**

The Bureau of Household Goods and Services (Bureau) enforces the Home Furnishings and Thermal Insulation Act (Act) and oversees insulation manufacturer and furniture retailer, wholesaler, manufacturer, importer, supply dealer, custom upholsterer, and sanitizer licensees. The Bureau currently licensees approximately 23,500 licensees, the majority of which are small businesses. From the beginning of fiscal year 2015-16 to the end of fiscal year 2018-19, the Bureau denied a combined total of seven applications for licenses under the Act due to substantially related prior crimes.

In accordance with the statutory amendments implemented by Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), by July 1, 2020, Business and Professions Code (BPC) section 481 will require boards within the Department of Consumer Affairs (DCA) to develop criteria for use 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 professions it regulates. Further, BPC section 493 will require the boards to determine whether a crime is substantially related to the qualifications, functions, or duties of the professions it regulates by using criteria, including the nature and gravity of the offense, the number of years elapsed since the date of the offense, and the nature and duties of the profession. The substantial relationship requirement stems from the due process principle that a statute constitutionally can prohibit an individual from practicing a lawful profession only for reasons related to his or her fitness or competence to practice. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 448; *Moustafa v. Board of Registered Nursing* (2018) 29 Cal. App. 5th 1119, 1135.)

In addition, BPC section 482 will modify the existing requirement for boards to develop criteria to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license. Specifically, the amendments of BPC section 482 through AB 2138 will require boards to consider whether an applicant has

completed the criminal sentence at issue without a violation of parole or probation in addition to the board's applied criteria. In the context of professional licensing decisions, the courts have said that, "[r]ehabilitation...is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058, internal punctuation omitted.) Additionally, the Legislature's "clear intent" in enacting AB 2138 was "to reduce licensing and employment barriers for people who are rehabilitated." (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal. App. 5th 1119, 1135.)

California Code of Regulations, title 4, section 1380 establishes the criteria for determining when a crime is substantially related to the qualifications, functions and duties of a Bureau licensee. California Code of Regulations, title 4, section 1381 establishes the criteria for determining rehabilitation of an applicant or licensee when considering denial, suspension, revocation, or petition for reinstatement of a license on the ground of a criminal conviction or other prior misconduct.

As required under AB 2138, the Bureau proposes to amend sections 1380 and 1381 of article 15 of division 3 of title 4 of the CCR to adhere to these mandates and revise its substantial relationship and rehabilitation criteria. The Bureau does not know how many applicants were discouraged from applying or would have qualified for registration under the proposed revised rehabilitation or prior criminal history substantial relationship criteria, although the Bureau is certain this proposal will have a positive impact on the affected populations.

### **SPECIFIC PURPOSE, ANTICIPATED BENEFIT, AND RATIONALE:**

#### **Amend Section 1380 of Article 15 of Division 3 of Title 4 of the CCR (Substantial Relationship Criteria)**

##### **Section 1380, subsection (a)**

Purpose: The purpose of amending section 1380, subsection (a) is to expand the regulation to include discipline under BPC section 141 because the substantially related acts that are the basis for discipline in an out-of-state jurisdiction may be used to discipline a licensee under BPC section 141. This subsection would also include substantially related "professional misconduct," since the Bureau may consider such misconduct in denying licenses under BPC section 480 as amended by AB 2138. The subsection would be amended to reword and move to subsection (c) the phrase, "Such crimes or acts shall include but not be limited to those involving the following:". This proposal would rename section 1380 as "Substantial Relationship Criteria," which would

standardize the title with similar Department of Consumer Affairs (DCA) regulatory sections of similar purpose. This proposal would also reword and move the existing subsections (a) and (b) to proposed subsection (c), which will provide a list of crimes, misconduct, and acts that are to be considered as substantially related to the qualifications, functions, or duties of a licensee.

Anticipated Benefit: The proposed revisions to section 1380, subsection (a) would provide clarity to applicants and licensees that the Bureau is statutorily authorized to deny, suspend, or revoke a license, as applicable, on the basis of professional misconduct and discipline in an out-of-state jurisdiction. The proposal would also make aware parties relevant to any administrative appeal arising from a licensing decision (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) that when disciplining applicants or licensees for a criminal conviction, the Bureau is required to determine whether the act is substantially related to the practice of manufacturing or selling products under the Bureau's jurisdiction using the listed criteria.

Rationale: BPC section 141 authorizes the Bureau to discipline a licensee on the basis of substantially related out-of-state discipline. Business and Professions Code section 480 also authorizes the Bureau to deny a license application on the basis of substantially related formal discipline by a licensing board in or outside of California. This proposal seeks to implement, interpret, and make specific BPC sections 141 and 480 by adding their relative provisions to the Bureau's substantial relationship criteria regulation. Accordingly, the proposal is necessary to provide the appropriate notice to license applicants and licensees that discipline in an out-of-state jurisdiction and professional misconduct are grounds for license denial, suspension, or revocation, and implement the requirements of BPC sections 141 and 480. This proposal is also necessary to consolidate into one regulation the criteria the Bureau will apply in evaluating whether a crime or other misconduct is substantially related to the licensed profession.

### **Section 1380, subsection (b)**

Purpose: The purpose of adding section 1380, subsection (b), is to implement AB 2138 and BPC section 481, which require 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 professions regulated by the board, and to include the specific criteria mandated for consideration by AB 2138's amendments to BPC 481. This subsection would be amended to reword and move the statement that a violation of the Act is considered a substantially related

crime into subsection (c) to allow for the reorganization that is required by the amendments of this proposal.

Anticipated Benefit: The proposed revisions to section 1380, subsection (b), would provide clarity and transparency to applicants and licensees by listing the specific criteria the Bureau must consider when making the substantial relationship determinations applicable to criminal convictions. The proposal would also make aware parties relevant to any administrative appeal arising from a license denial, suspension, or revocation (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) of the specific criteria used by the Bureau to determine whether a criminal conviction is substantially related to the duties of manufacturing or selling products under the Bureau's jurisdiction.

Rationale: BPC section 480, subsection (a)(3)(B), presently authorizes boards to deny an application for licensure based on conviction for a crime or act substantially related to the licensed business or profession. Likewise, section 490, subsection (a), authorizes boards to suspend or revoke a license on the basis that the licensee was convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession. Business and Professions Code section 481 requires boards to develop criteria to help evaluate whether a crime is substantially related to the regulated business or profession and the boards to establish the criteria via regulations.

The Legislature's clear intent in enacting AB 2138 was to reduce licensing and employment barriers for people who are rehabilitated. (*Moustafa v. Board of Registered Nursing* (2018) 29 Cal. App. 5th 1119, 1135.) Accordingly, in AB 2138, the Legislature amended BPC section 480 to limit the boards' ability to use prior convictions or acts when denying licenses. Beginning July 1, 2020, boards may not deny a license to an applicant because the applicant was convicted of a crime, or due to the acts underlying the conviction, if the applicant has a certificate of rehabilitation, was granted clemency, made a showing of rehabilitation, or the conviction was dismissed or expunged. (BPC, § 480, subs. (b) & (c), as added by AB 2138, § 4.)

Absent these circumstances, AB 2138 will permit boards to deny a license when an applicant has been convicted of a crime if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession and one of the following conditions exist:

- 1) the conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a

registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of a specified business or profession regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau;

- 2) the applicant is presently incarcerated for the crime; or
- 3) the applicant was released from incarceration for the crime within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of: (a) a serious felony under Penal Code section 1192.7; (b) a registerable offense under Penal Code section 290, subdivision (d)(2) or (3)); or, (c) a felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of specified businesses or professions regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, and Cemetery and Funeral Bureau.

Assembly Bill 2138 also specifies three criteria that boards must consider when evaluating whether a crime is “substantially related” to the regulated business or profession. The criteria “shall include all of the following: (1) The nature and gravity of the offense[;] (2) The number of years elapsed since the date of the offense[; and] (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed.” (BPC, § 481, subd. (b), as added by AB 2138, § 7; see also BPC, § 493, subd. (b), as added by AB 2138, § 13.) Accordingly, the proposed regulation lists each of these criteria for the Bureau to consider when making a substantial relationship determination. This proposed addition is necessary to conform the regulation to statute, and to consolidate the Bureau’s substantial relationship criteria in one place.

### **Section 1380, subsection (c)**

Purpose: The purpose of adding section 1380, subsection (c), is to clarify the crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Bureau licensee. These include violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any laws governing the practice of a licensee. This proposed subsection lists other crimes that the Bureau has determined are substantially related to the duties of a

licensee. This proposal also includes technical revisions to accommodate the revisions made to subsection (a).

Anticipated Benefit: The proposed additions in section 1380, subsection (c), would provide clarity to applicants and licensees of the specific crimes, professional misconduct, or acts that are substantially related to the qualifications, functions, or duties of a Bureau licensee. The proposal would also make aware parties relevant to any administrative appeal arising from a license denial, suspension, or revocation (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel) that substantially related crimes, professional misconduct, and acts include violations of other state or federal laws governing licensees.

Rationale: The current regulation provides that crimes or acts that are substantially related to manufacturing or selling products under the Bureau's jurisdiction include violating or attempting to violate, directly, or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provisions or term of the Act, and crimes involving fiscal dishonesty or crimes demonstrating a serious disregard for the health, safety, or welfare of the public. As reflected in BPC sections 141 and 480, the Bureau may deny, suspend, or revoke a license, as applicable, on the ground of substantially related out-of-state discipline or professional misconduct. To incorporate and clarify these statutory provisions, the proposal would specify that substantially related crimes, professional misconduct, and acts include violations of other state or federal laws relating to the practice as a service dealer or service contractor.

Proposed subsection (c) contains many revisions that are intended to clarify the crimes, professional misconduct, or acts that shall be used in the denial, suspension, or revocation of a registration. Specifically:

- Proposed subsection (c)(1) is renumbered from subsection (a) and reworded to specify that violations and attempted violations of the Act are considered substantially related to the qualifications, functions, or duties of a licensee. The Act governs the requirements of licensees. Accordingly, violations of the Act and attempts, both direct and indirect, to violate the Act, are inherently related to the qualifications, functions, or duties of a licensee. For example, a violation of a manufacturing standard outlined in the Act would be a violation of the functions and duties of a manufacturer licensed by the Bureau.
- Proposed subsection (c)(2) establish that crimes involving dishonesty, fraud, deceit, or theft with the intent to benefit oneself or harm another are substantially related. This addition is appropriate because, among other reasons, licensees of

the Bureau are engaged the manufacture of consumer goods subject to safety standards and may also engage in commercial transactions involving trust between themselves and the public. The manufacture of goods requires adherence to minimum safety standards for products and requires manufacturers to truthfully assert they have complied with these standards. Further, commercial transactions require an element of trust in the delivery of products as described, for amounts and under conditions agreed to. Past evidence of crimes involving dishonesty, fraud, deceit or theft relate to concepts of truth and trustworthiness, both in action, as relating to the manufacture or repair of goods, in communication to others, and in forming and performing agreements. This subsection would add uniformity with the substantial relationship criteria of the Bureau's other regulated professions and will enable a consistent disciplinary action procedure. This amendment also conforms with BPC section 475.

- Proposed subsection (c)(3) is renumbered from subsection (b) and reworded to inform the reader that a violation of the laws regarding truth in advertising is considered to be substantially related to the practice of licensees under the Act. This violation is included because licensees of the Bureau may engage in commercial transactions involving promises made through advertisement of a product or service.

### **Section 1380, subsection (d)**

Purpose: The purpose of adding section 1380, subsection (d), is to clarify that when a crime, professional misconduct, or act that is substantially related to the qualifications, functions, or duties of a Bureau licensee results in a registration denial, suspension, or revocation, the applicant or licensee may request a hearing to appeal the Bureau's decision.

Anticipated Benefit: The proposed addition of section 1380, subsection (d), would provide clarity to applicants and licensees regarding their due process rights when the Bureau takes action to deny, suspend, or revoke a registration on the basis of substantially related criteria. The proposal would also make aware parties relevant to any administrative appeal arising from a licensing decision (e.g., the Deputy Attorney General, the Administrative Law Judge, respondent, and respondent's counsel), that when disciplining applicants or licensees for a criminal conviction, the Bureau has informed the applicant or licensee of their rights to due process.

Rationale: Proposed subsection (d) specifies that an individual who is denied for licensure may request a hearing to determine whether the applicant should be licensed.

This section informs applicants and licensees of their rights following license denial, suspension, or revocation. Business and Professions Code § 485 informs an applicant of their due process rights in the case of a denial of licensure. However, because the substantially related criteria also apply to suspensions and revocations, the Bureau finds it necessary to notify affected parties that due process rights are likewise afforded to existing licensees. Subsection (d) complies with § 485 and the statutory requirements of BPC § 19209 of the Act, which grants applicants and licensees the right to have a hearing upon the denial, suspension, or revocation of a license. This provision is repeated for the convenience of the affected party and ensures that an applicant whose application is impacted by conviction of a substantially related crime, or licensee who has been subjected to disciplinary action because of a conviction, is aware of their due process rights.

**Amend Section 1381 of Article 15 of Division 3 of Title 4 of the CCR (Criteria for Rehabilitation)**

**Section 1381, subsection (a)**

Purpose: The purpose of amending section 1381, subsection (a), is to comply with AB 2138, section 9, and BPC section 482, subdivision (b)(1), which require the boards to consider whether an applicant or licensee has made a showing of rehabilitation if the criminal sentence at issue was completed without a violation of parole or probation. As AB 2138 does not prescribe new rehabilitation criteria, the proposal also provides a specific list of criteria for the Bureau to consider for these applicants and licensees. The criteria are limited to considerations relevant to the crime and the criminal sentence since AB 2138 requires the Bureau to consider rehabilitation in the narrow context of an applicant or licensee who completed the criminal sentence without a parole or probation violation. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under the DCA.

Anticipated Benefit: The proposed revisions to section 1381, subsection (a), would provide transparency and clarity to applicants and licensees who have completed their criminal sentence without a violation of parole or probation. Providing a narrow list of rehabilitation criteria would help applicants and licensees understand the facts and documents to present to the Bureau to demonstrate their rehabilitation. The proposal would also assist parties relevant to any administrative appeal arising from a license denial, suspension, or revocation (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's or licensee's counsel) in advocating for or against, or deciding upon, applicants and licensees who have criminal convictions and completed parole or probation without a violation, by listing rehabilitation criteria.

Rationale: BPC section 482 requires boards to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering denying or disciplining a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions. Existing Business and Professions Code section 480, subsection (b), prohibits boards from denying a license based solely on a misdemeanor conviction if the applicant meets the requirements of the board's criteria of rehabilitation.

Operative July 1, 2020, BPC section 480 will prohibit boards from denying a license on the basis that the applicant was convicted of a crime or on the basis of the acts underlying a conviction, if the applicant "made a showing of rehabilitation pursuant to Section 482." (BPC, § 480, subd. (b), as added by AB 2138, § 4.) In deciding whether to deny a license based on a conviction, the Bureau must consider evidence of the applicant's rehabilitation, pursuant to the process established in the Act, or its regulations and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 ["A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation"].)

To implement AB 2138, it is necessary for the Bureau to revise its regulations that establish criteria for evaluating rehabilitation, when deciding whether to deny a license based on a criminal conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.) The Bureau must also decide whether an applicant "made a showing of rehabilitation," if the applicant or licensee completed the criminal sentence at issue without a violation of parole or probation. (BPC, § 482, subd. (b), as added by AB 2138, § 9.)

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that boards must consider when denying or taking disciplinary action against a license; however, the extent to which a person complied with the terms of parole or probation is already a factor considered by the Bureau in evaluating rehabilitation. (4 CCR § 1381, subs. (d).) Nonetheless, under AB 2138, the Bureau must now consider whether an applicant or licensee who complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, even without considering other standard rehabilitation criteria.

This proposal specifies the following criteria for the Bureau to consider when making the determination that the applicant or licensee who has successfully completed the criminal sentence has made a showing of rehabilitation: (1) the nature and gravity of the crime(s); (2) the length(s) of the applicable parole or probation period(s); (3) the extent to which the applicable parole or probation period was shortened or lengthened, and the

reason(s) the period was modified; (4) the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation; and (5) the extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification. The criteria are necessary to assist the Bureau in evaluating rehabilitation. Since the purpose of evaluating rehabilitation is to determine whether the applicant or licensee is sufficiently reformed to be licensed, but AB 2138 requires the Bureau to evaluate rehabilitation in the context of an applicant or licensee who completed the criminal sentence without violating parole or probation, each of these criteria provide information specific to the criminal sentence and terms or conditions of parole or probation. This information will allow the Bureau to apply the relevant criteria when making a determination of the applicant's or licensee's rehabilitation. In addition, to provide uniformity with other DCA boards, the criteria are proposed by the Bureau pursuant to DCA's recommended rehabilitation criteria.

The Bureau must consider the nature and gravity of the crime because this is the offense against which the applicant's or licensee's rehabilitative efforts will be evaluated. This criterion is necessary because the nature and gravity of the offense may provide an indication of the level to which the applicant or licensee has shown disregard for the safety and welfare of others.

The Bureau will consider the length of the applicable parole or probation period because the length of time that the applicant or licensee served probation or parole without a violation is relevant to evaluating rehabilitation and will comply with licensure requirements in the future. (See *In re Conflenti* (1981) 29 Cal.3d 120, 124-125 ["a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice"].)

The Bureau must consider the extent to which the parole or probation period was shortened or lengthened, and the reason for any change, because such periods can be shortened or lengthened for good or bad conduct and this may bear on whether the applicant or licensee is sufficiently rehabilitated.

The Bureau must consider the terms or conditions of parole or probation and the extent to which they bear on rehabilitation because the actual parole or probation terms can inform the Bureau on whether the applicant or licensee is rehabilitated. Harsher terms may indicate that the applicant or licensee needs a level of oversight by law enforcement that is not appropriate for a Bureau licensee. Less strict terms may show evidence that the applicant or licensee poses less of a risk to others or less of a risk to repeat the offense.

The Bureau must consider the extent to which the terms or conditions of parole or probation were modified and the reason for modification because this may be relevant for the Bureau's determination. Terms that are modified in favor of the applicant or licensee may demonstrate that the applicant or licensee has proven he or she poses no risk to others while enhanced terms may demonstrate a lack of rehabilitation or the need for additional supervision by authorities.

### **Section 1381, subsection (b)**

Purpose: The purpose of amending section 1381, subsection (b), is to comply with AB 2138, section 9, and BPC section 482, subdivision (b)(2), which require boards to consider whether an applicant or licensee has made a showing of rehabilitation if he or she does not qualify for the criteria under subsection (a). The criteria of subsection (b) may be applied when: (1) the applicant or licensee has not completed the criminal sentence at issue without a violation of parole or probation; (2) the Bureau does not find a sufficient showing of rehabilitation based on the narrow criteria in subsection (a); or (3) the denial, suspension, or revocation is based on something other than a crime, such as professional misconduct or being subject to disciplinary action in another state.

As AB 2138 does not prescribe new rehabilitation criteria, this proposal also provides a specific, more comprehensive, list of criteria for the Bureau to consider for these applicants and licensees, which is not limited to the applicable parole or probation. The proposed criteria incorporate subsection (a) so that similarly-situated applicants and licensees have the opportunity to be evaluated by the Bureau under the same set of criteria. The criteria also anticipate that the Bureau may be considering "act(s)" that are the basis for the denial, suspension, or revocation because the Bureau may be evaluating the rehabilitation of an applicant or licensee where the ground for denial, suspension, or revocation involves acts of professional misconduct, rather than a conviction. This proposal is also intended to provide predictability in the application process and uniformity of rehabilitation criteria with other boards under DCA.

Anticipated Benefit: The proposed revisions to section 1381, subsection (b), would provide transparency and clarity to applicants and licensees who have not completed their criminal sentence without a violation of parole or probation or otherwise do not qualify for consideration under subsection (a). Providing the list of rehabilitation criteria would help applicants and licensees understand the facts and documents to present to the Bureau to demonstrate their rehabilitation. The proposal would also assist parties relevant to any administrative appeal arising from a license denial (e.g., the Deputy Attorney General, the Administrative Law Judge, and the applicant's counsel) in

advocating for or against, or deciding upon, applicants and licensees who do not qualify for consideration under subsection (a), by listing rehabilitation criteria applicable to the applicant.

Rationale: BPC section 482 currently requires boards to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering denying or disciplining a license based on a conviction, acts of dishonesty, fraud, or deceit, or acts that would be grounds for discipline, and to consider evidence of rehabilitation in making such decisions. Business and Professions Code section 480, subsection (b), prohibits boards from denying an applicant a license based solely on a misdemeanor conviction if the applicant meets the requirements of the board's criteria of rehabilitation.

Operative July 1, 2020, BPC section 480 will prohibit boards from denying or disciplining a license on the basis that the applicant was convicted of a crime if the applicant "made a showing of rehabilitation pursuant to Section 482." (BPC, § 480, subd. (b), as added by AB 2138, § 4.) In deciding whether to deny a license based on a conviction, the Bureau must consider evidence of the applicant's rehabilitation, pursuant to the process established in the Act, or its regulations and as directed under BPC section 482. (BPC, § 481, subd. (c), as added by AB 2138, § 7; see also BPC, § 493, subd. (b)(2), as added by AB 2138, § 13 ["A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation"].)

To implement AB 2138, it is necessary for the Bureau to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to deny a license based on a conviction. (BPC, § 482, subd. (a), as added by AB 2138, § 9.) The Bureau must also decide whether an applicant or licensee "made a showing of rehabilitation," if the applicant or licensee did not complete the criminal sentence at issue without a violation of parole or probation, but the Bureau finds when applying its rehabilitation criteria, that the applicant or licensee is rehabilitated. (BPC, § 482, subd. (b), as added by AB 2138, § 9.) AB 2138 also authorizes boards to deny a license based on prior disciplinary misconduct. Accordingly, it is necessary to amend the regulation to account for denials on this ground.

Unlike the substantial relationship criteria, AB 2138 does not prescribe new rehabilitation criteria that the Bureau must consider when denying or disciplining a license and the extent to which a person complied with the terms of parole or probation is already a factor considered by the Bureau in evaluating rehabilitation. (4 CCR, § 1381, subs. (d).) Nonetheless, pursuant to AB 2138, the Bureau must now consider whether an applicant or licensee who may not have complied with the terms of parole or probation made a showing of rehabilitation sufficient for licensure, as well as those the

Bureau does not find made a sufficient showing of rehabilitation based on the criteria in subsection (a) or when the denial, suspension, or revocation is based on something other than a crime.

This proposal uses elements of the existing rehabilitation criteria in addition to the criteria specified in proposed section 1381, subsection (a), and makes other revisions. Each of these criteria are designed to focus the Bureau's evaluation on facts and circumstances relevant to an applicant's or licensee's rehabilitation so the Bureau knows which criteria it must review to make a determination. In addition, to provide uniformity with other DCA boards, the Bureau's proposed criteria are based on DCA's recommended rehabilitation criteria.

The Bureau will consider the nature and gravity of the crime or act for the same reasons as discussed for subsection (a). This is the offense or misconduct against which the Bureau will judge the applicant's or licensee's rehabilitation. This criterion is necessary because the nature and gravity of the offense may provide an indication of the level to which the applicant or licensee has shown disregard for the safety and welfare of others.

The Bureau will also consider the applicant's or licensee's criminal record as a whole. The complete criminal record may provide insight into whether prior offenses will be repeated. In the interest of consumer protection, the Bureau should not provide licenses to individuals who are considered to have a high risk of repeating their past criminal acts. Proposed subsection (b)(2) would also require the Bureau to consider evidence of any act committed subsequent to the act or offense under consideration. Subsequent acts may also indicate whether the offense will be repeated. It may not be reasonable to provide licenses to individuals who have an extensive history of criminal acts as there may be a high risk of repeating their past criminal offenses.

The Bureau would consider the time that elapsed since commission of the prior crimes or misconduct. The passage of time bears on a person's rehabilitation, and accordingly, it is necessary to consider this criterion in evaluating rehabilitation. This criterion is an existing factor from the Bureau's current rehabilitation criteria and is not changed from existing regulation.

The Bureau will consider whether the terms of parole, probation, restitution or other sanctions imposed on the applicant or licensee were met. The Bureau proposes amending "The extent to which," to "Whether," but does not view this as a substantive change. This criterion is otherwise unchanged from existing regulation. The information allowed by this criterion bears on rehabilitation in terms of the applicant's or licensee's

willingness to make amends from prior misconduct and willingness to conform to the rules of licensure. Accordingly, it is necessary for the Board to consider these elements to evaluate an applicant's or licensee's reformation from prior misconduct.

The Bureau will also consider the criteria in subsection (a). This is necessary to ensure that all applicants and licensees convicted of a crime have the opportunity to be evaluated under the same set of rehabilitation criteria. For those who completed their criminal parole or probation without a violation, the Bureau would first evaluate their eligibility for licensure under the criteria in subsection (a). If the applicant or licensee did not demonstrate sufficient rehabilitation under the criteria in subsection (a) or is otherwise ineligible, the Bureau would apply the broader criteria in subsection (b), including those who did not complete their criminal parole or probation without a violation. This way, similarly-situated applicants and licensees (those being considered for denial, suspension, or revocation based on a conviction) have the benefit of the same set of criteria.

The Bureau will consider evidence of dismissal proceedings pursuant to Penal Code section 1203.4. The Bureau is prohibited from denying a license on the basis of a conviction that has been dismissed. (BPC § 480(c), as added by AB 2138, § 3.) This proposal would clarify that in the event a license is denied, suspended, or revoked based on the substantially related criteria, an applicant or licensee may submit evidence of dismissal to support their application for registration with the Bureau.

The Bureau will consider a certificate of rehabilitation as evidence of rehabilitation. Although statute (BPC § 480(c), as added by AB 2138, § 3.) prohibits the Bureau from denying a license to anyone who has obtained a certificate of rehabilitation, this proposal would make clear that a certificate of rehabilitation may also be considered as evidence of rehabilitation in the event of a denial, suspension, or revocation. Allowing applicants or licensees to submit a certificate will allow those who were not aware of the option to now submit a certificate as documentary evidence in support of their rehabilitation. In addition, this subsection will clarify to applicants and licensees whose licenses were denied, suspended, or revoked before adoption of this regulation that they may submit a certificate as evidence of rehabilitation.

The Bureau will consider any evidence of rehabilitation submitted on behalf of the applicant or licensee. The Bureau is required to consider such evidence under BPC section 481(c), however, it is necessary to retain this requirement in order to consolidate the Bureau's rehabilitation criteria in one place.

## **Underlying Data**

- AB 2138 (Chiu, Chapter 995, Statutes of 2018)

## **Business Impact**

The proposed regulations will not have a significant adverse economic impact on businesses. This initial determination is based on the purpose of AB 2138, which seeks to reduce barriers to licensure for applicants and licensees with criminal histories or discipline against their license. The Bureau anticipates the proposed regulations will impact businesses to the extent that individual applicants or licensees are able to become licensed or retain licensure under the proposal. The Bureau does not know how many applicants will gain or retain licensure but does not anticipate this proposal to significantly impact businesses.

## **Economic Impact Assessment**

This regulatory proposal will have the following effects:

- It may create jobs within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for applicants and licensees with criminal histories or prior discipline to obtain and maintain licensure. As all Bureau licensees are businesses, reducing barriers to licensure may allow more businesses to be created, thus resulting in new jobs.
- It may create new businesses within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or discipline to obtain and maintain licensure. As all Bureau licensees are businesses, reducing barriers to registration may allow more businesses to be created.
- It will not affect the expansion of businesses currently doing business within the State of California because the regulations are aimed at reducing barriers to licensure and make it easier for license applicants and licensees with criminal histories or discipline to obtain and maintain licensure.
- This regulatory proposal benefits the health and welfare of California residents because it would increase access to licensed businesses, which will allow for greater consumer choice and create a more competitive market.
- This regulatory proposal does not affect worker safety because it establishes criteria, based upon recent statutory mandates for licensure following the applicant's or licensee's criminal conviction. It does not involve worker safety.
- This regulatory proposal does not affect the state's environment because it only regulates applicants and licensees and their qualifications for licensure following a criminal conviction or disciplinary action. It does not involve environmental issues.

- While the Bureau does not know how many applicants will obtain registration or avoid discipline under this proposal that would not have been able to under existing law, the Bureau does not anticipate the number to be significant as the overall number of registrations denied related to criminal history or prior conduct issues is already low.

### **Specific Technologies or Equipment**

This regulatory proposal does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons than the proposed regulation, or 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 alternative was 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 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.

Any interested person may submit comments to the Bureau in writing relevant to the above determinations at 4244 South Market Court, Suite D, Sacramento, California 95834.