

**TITLE 16. BUREAU OF SECURITY AND INVESTIGATIVE SERVICES
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

**Substantial Relationship Criteria, § 602
Criteria for Evaluating Rehabilitation, § 602.1**

California Code of Regulations (CCR)

NOTICE IS HEREBY GIVEN that the Bureau of Security and Investigative Services (Bureau) proposes to adopt the regulations described in the Informative Digest below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Bureau has not scheduled a public hearing on this proposed action. However, the Bureau will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under “Contact Person” in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on Tuesday, April 21, 2020, or must be received by the Bureau at the hearing, should a hearing be held. Oral comments should be made at the hearing, should a hearing be held.

The Bureau, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 481, 482, 6980.7, 6980.71, 7501.6, 7515, 7574.05, 7581, and 7591.6 of the Business and Professions Code (BPC), and to implement, interpret or make specific Sections 141, 475, 480, 481, 482, 488, 490, 493, 6980.45, 6980.71, 6980.72, 6980.73, 6980.74, 7501.8, 7503.5, 7504.1, 7506.8, 7510.1, 7526.1, 7538, 7561.1, 7561.4, 7574.15, 7582.24, 7582.3, 7583.21, 7587.1, 7591.10, 7591.12, 7593.16, and 7599.61 of the Code, the Bureau proposes changes to Division 7 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Bureau regulates professions in six (6) practice acts: Alarm Company Act, Locksmith Act, Private Investigator Act, Private Security Services Act, Proprietary Security Services Act, and Collateral Recovery Act. Included in its regulatory oversight, the Bureau has the authority to deny applications for licensure or suspend or revoke current licenses in specified circumstances, pursuant to BPC sections 480 and 490.

The Bureau has the authority to deny an application or suspend or revoke a current licensee if the applicant or licensee is convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the applicant seeks licensure or in which the licensee is licensed. This proposal will implement, interpret, and make specific mandates of Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018), hereafter referred to as AB 2138, by developing criteria for 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, pursuant to BPC section 481, operative July 1, 2020.

Additionally, when considering the denial, suspension, revocation, or reinstatement of a license, the Bureau considers if the applicant, licensee, or petitioner provides evidence of rehabilitation. Rehabilitation criteria are contained in three (3) of the Practice Acts regulated by the Bureau (Locksmith Act, Collateral Recovery Act, and Alarm Company Act) and is also contained in section 602.1 of Division 7 of Title 16 of the CCR. This proposal will implement, interpret, and make specific mandates of AB 2138 to develop criteria to evaluate the rehabilitation of a person when considering the denial of a license under BPC section 480 or considering suspension or revocation of a license under BPC section 490, pursuant to BPC section 482, operative July 1, 2020.

The proposal will reduce barriers to licensure for individuals with prior criminal convictions, reduce recidivism, and provide economic opportunity to California's residents. By reducing barriers to licensure, the Bureau anticipates benefits to consumers who may have greater access to licensed or registered professionals, which would benefit the health and welfare of California's residents. In addition, the proposal

seeks to improve clarity, transparency, and consistency for applicants and licensees in the Bureau's use of their criminal histories for purposes of license denial, suspension, or revocation.

ANTICIPATED BENEFITS OF THE PROPOSAL

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Board's use of their criminal histories. Further, by reducing barriers to licensure, the Board anticipates benefits to consumers who may have greater access to licensed professionals.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Bureau has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Bureau anticipates that there may be an increased cost to the state as a result of adopting and amending the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Bureau staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved.

The Bureau estimates costs to implement the provisions of AB 2138 include workload to obtain criminal history information either from the applicant or from local superior courts. Staff will be required to contact the courts for this information, as well as paying any associated costs for such documents.

The Bureau anticipates costs of \$150,000 in 2020-21 and \$142,000 annually thereafter, possibly requiring the Bureau to hire one Associate Governmental Program Analyst to help implement the provisions of AB 2138.

As a result, the Bureau may be required to request additional resources through the annual budget process for additional staff to accommodate increased workload resulting from enactment of laws affecting the compliance, review, and investigations of applicants' and licensees' fitness or eligibility for licensure.

In the event the proposed regulations increase the number of licensees, the Bureau's application, license, and registration fee revenue will also increase. However, the Bureau anticipates any fee revenue increase to be minimal.

Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: No direct nondiscretionary costs or savings to local agencies are anticipated.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None.

Business Impact and Cost Impact on Representative Private Person or Business, and Effect on Small Business:

The Board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

AB 2138 and the proposed regulations will affect Bureau licensees, registrants, and applicants with past criminal convictions or disciplinary action because they seek to reduce barriers to licensure with the Bureau if the individual can present evidence of rehabilitation.

The Bureau currently provides licensure to approximately 333,504 licensees, registrants, and permit/certificate holders in the state. If more individuals who were previously unable to obtain a license or registration are able to obtain one, the pool of potential licensees and registrants may also increase. This could affect businesses seeking to hire because they have more potential employees to choose from, or they may choose to hire more employees. It may create some new businesses and will not eliminate businesses because some Bureau licensees and registrants may choose to start their own company or small business. The types of businesses that may be affected range from small private companies to large companies. The total number of businesses affected or what percentage of these businesses may be small businesses is unknown.

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

This proposal may affect small businesses, who would have a greater pool of licensees from which to hire.

Effect on Housing Costs:

None.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

The Bureau has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of the Proposed Action:

This proposal may benefit the health and welfare of California residents because, by reducing barriers to licensure, it will create an opportunity for employment for people who have been convicted of a crime and are able to make a showing of rehabilitation and will benefit consumers who may have greater access to licensed or registered professionals.

This proposal will not affect worker safety because the proposal does not involve worker safety.

This proposal will not affect the state's environment because it does not involve environmental issues.

The Bureau anticipates that there may be an increased cost of the state as a result of adopting and amending the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, Bureau staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved. Any workload and costs are anticipated to be minor and absorbable within existing resources.

The Bureau does not anticipate an increase in initial license applications approved per year because the current license review and approval process is already consistent with the proposed regulations. As a result, the proposed regulations are not anticipated to increase licensing and/or enforcement costs related to any expansion of the licensee population.

While the costs for implementing the instant regulations are estimated to be minor and absorbable, the Bureau estimates costs to implement the provisions of AB 2138 will result from the workload to obtain criminal history information either from the applicant or from local county courthouses. Staff will be required to contact the counties for this information, as well as paying any associated costs for such documents.

The Bureau anticipates costs of \$150,000 in 2020-21 and \$142,000 annually thereafter that might necessitate hiring 1.0 Associate Governmental Program Analyst to help to implement the provisions of AB 2138.

In the event the proposed regulations increase the number of licensees, the Bureau's application, license, and registration fee revenue will also increase. However, the Bureau anticipates any fee revenue increase to be minimal.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned public hearing or during the written comment period, as described above.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Karissa Huestis
Address: 2420 Del Paso Road, Suite 270
Sacramento, CA 95834
Telephone No.: (916) 575-7158
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The backup contact person is:

Name: Antoine Hage
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Sacramento, CA 95834
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Website Access: Materials regarding this proposal can be found at www.bsis.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OR PROPOSED REGULATIONS, AND RULEMAKING FILE

The Bureau will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons or other information upon which the rulemaking is based. Copies may be obtained by contacting Karissa Huestis at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Bureau may adopt the proposed regulations substantially as described in this notice. If the Bureau makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Bureau adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Karissa Huestis at the address indicated above. The Bureau will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Karissa Huestis at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at www.bsis.ca.gov.