



## Board of Vocational Nursing and Psychiatric Technicians Legislative Analysis

<b>BILL NUMBER:</b>	Assembly Bill 1662
<b>SUBJECT:</b>	Licensing Boards: Disqualification from Licensure: Criminal Conviction
<b>INTRODUCTION DATE:</b>	January 18, 2022
<b>AUTHOR:</b>	Assembly Member Mike Gipson
<b>SPONSOR:</b>	Author

### **DESCRIPTION OF PROPOSED LEGISLATION:**

AB 1662 (Gipson) would authorize a prospective applicant to a prelicensure training program who has been convicted of a crime to submit a request to the licensing board for a preapplication determination regarding their criminal conviction. The bill would require the board 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.

### **STAFF POSITION/RECOMMENDATION:**

**OPPOSE**

### **BACKGROUND:**

Existing law, Business and Professions Code (BPC) 480, establishes that a board may deny a license on the grounds that the applicant has been convicted of a crime; done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another; done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

BPC 480 specifies that a license may only be denied for prior misconduct if the disqualifying crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. The statute also states that a person may not be denied a license solely based on a conviction if he or she possesses a certificate of rehabilitation. Statute further clarifies that a dismissed conviction may not be grounds for disqualification for licensure

In 2018, the Legislature approved and the Governor signed AB 2138 (Chiu and Low), which sought to reduce barriers to licensure for individuals with prior criminal convictions by limiting a regulatory board's discretion to deny a new license application to cases where the applicant was formally convicted of a substantially related crime or subjected to formal discipline by a licensing board, with offenses older than seven years.

BVNPT bases its licensing decisions on the particular facts and circumstances of each case. As reflected in Board regulations, these case-by-case decisions require flexible criteria rather than highly prescriptive criteria.

### **ANALYSIS:**

Although the goal of reducing barriers to licensure, and increasing opportunities for all Californians is admirable, AB 1662 would be extremely complicated and costly to implement and creates risks to consumer safety. Further, it would not be possible for the Board to implement this bill within existing resources.

There are approximately 14,000 VN and PT students each year, and classes are admitted at various intervals throughout the year. The applicant pool would be much larger. The workload created by this bill would not be concentrated in just 1 or 2 peak periods. Using the annual number of students as a baseline, if two percent of 14,000 students request the review authorized by AB 1662, it would equal about 280 applications each year. For perspective, the Board's Licensing Division refers approximately 900 applicants who have **already completed** the education and licensing examination to the Enforcement Division each year for review and the pool created by this bill would be significantly larger. If an individual inquiry takes an average of ten hours to process, exclusive of managerial review, a single enforcement analyst could process about 200 inquiries per year.

To perform this evaluation,

1. The applicant would be required to supply all the information and history regarding their conviction(s).
2. If an individual is not completely truthful or thorough, the inquiry is worthless. To ensure the review's integrity, the Board would require fingerprinting at the applicant's expense.
3. The Board would also require the individual to sign a waiver of liability to allow the Board to request documents from courts and law enforcement.
4. Processing requests for documents is unpredictable, and often requires weeks or even months to complete, delaying the individual's ability to apply for and matriculate at a school.
5. Even if the pre-application inquiry is thorough, it could be two years before the individual is authorized to test for licensure. The Board cannot guarantee the application will be approved following the initial "pre" evaluation given this time frame.

The Board would need to seek statutory authority to assess a research fee for this "pre-evaluation. If the research fee were approximately \$200, (the applicant would also need to pay an additional \$25 for fingerprinting) this could create a new barrier to licensure and risk to consumer safety, as many individuals would either choose not to inquire, or choose not to apply for the program. If the individual was interested in more than one license type, certification from one DCA board would not necessarily meet the same criteria for another board, which means that the individual would possibly incur multiple costs. Although \$200 seems to be a sizable fee, 280 applicants per year would yield revenue of \$56,000. This is less than half of the cost for the staff needed and does not include Board costs to request documents from the DOJ, courts, and law enforcement. Processing the payments would also increase the Board's and DCA's cashiering staff and processing costs.

The Board could increase the exam fee for all applicants to fund this service, as an alternative. Since BVNPT is currently working on a new fee schedule to raise fees to the current statutory limit, it would again require seeking new statutory authority. Charging licensees who are facing an upcoming fee increase to pay an additional amount to fund the costs related to these additional circumstantial evaluations would be met with opposition from the licensing population and stakeholders.

Currently, prelicensure training programs do not require a background check for incoming students per se, but many clinical sites require one prior to allowing students on the floor. If this bill passes, it is conceivable that schools will start to require this Board certification as a condition of enrollment, so they do not have to do their own background checks. Should this become the case, the Board would need to request statutory authority for a new fee for the schools.

The Board's incoming calls and emails would increase dramatically, likely by thousands each year. Assuming a 10% increase of incoming call and email volume each year creates the need for an additional Program Technician II at \$48,000 per year.

Finally, the Board would need to create resources to share with schools and develop and maintain additional content on the website and social media platforms. Initially, this would most likely be supported by DCA Communications and paid for through the Board's existing pro rata; but ongoing costs would eventually be supported by the Board's Information Technology Associate.

### **FISCAL IMPACT**

1. BVNPT would need **at least** one fulltime analyst at AGPA level at approximately \$72,000 per year to review and research the requests and make a determination on *potential* licensure of the applicant. The intricate, independent and confidential nature of this work is potentially more appropriate for an SSMI Specialist, reporting directly to the Enforcement Chief at \$98,000 per year.
2. To accommodate the increase in customer services, the Boards would also need an additional PT II at approximately \$48,000 per year.
3. Initial and ongoing IT work would cost at least \$6,000, which is approximately 5% of the current Information Technology Associate's salary.
4. BreEZe would need to be updated to create a new field for these requests, so they can be tracked. DCA OIS would carry the costs for this, but the Board's user expenses would increase. Alternately, the Board would need to create and utilize a separate tracking system, at an unknown cost.
5. Implementation would require Rulemaking and entail a one-time cost at 25% of the Legislative and Regulations AGPA costing approximately \$18,000. In addition, this would require BVNPT specific legislation to create the new fees, at a one-time cost 25% of the same Analyst, costing an additional \$18,000. It is possible that this would be department-wide legislation.

**SUPPORT:** Unknown

**OPPOSITION:**Unknown

**ASSEMBLY BILL**

**No. 1662**

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**Introduced by Assembly Member Gipson**

January 18, 2022

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1662, as introduced, 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.

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 of the Business and Professions Code  
2 is amended to read:

3 480. (a) Notwithstanding any ~~other~~ provision of this code, a  
4 board may deny a license regulated by this code on the grounds  
5 that the applicant has been convicted of a crime or has been subject  
6 to formal discipline only if either of the following conditions are  
7 met:

8 (1) The applicant has been convicted of a crime within the  
9 preceding seven years from the date of application that is  
10 substantially related to the qualifications, functions, or duties of  
11 the business or profession for which the application is made,  
12 regardless of whether the applicant was incarcerated for that crime,  
13 or the applicant has been convicted of a crime that is substantially  
14 related to the qualifications, functions, or duties of the business or  
15 profession for which the application is made and for which the  
16 applicant is presently incarcerated or for which the applicant was  
17 released from incarceration within the preceding seven years from  
18 the date of application. However, the preceding seven-year  
19 limitation shall not apply in either of the following situations:

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

24 (B) The applicant was convicted of a financial crime currently  
25 classified as a felony that is directly and adversely related to the  
26 fiduciary qualifications, functions, or duties of the business or  
27 profession for which the application is made, pursuant to  
28 regulations adopted by the board, and for which the applicant is  
29 seeking licensure under any of the following:

30 (i) Chapter 6 (commencing with Section 6500) of Division 3.

31 (ii) Chapter 9 (commencing with Section 7000) of Division 3.

32 (iii) Chapter 11.3 (commencing with Section 7512) of Division  
33 3.

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

36 (v) Division 4 (commencing with Section 10000).

37 (2) The applicant has been subjected to formal discipline by a  
38 licensing board in or outside California within the preceding seven

1 years from the date of application based on professional misconduct  
2 that would have been cause for discipline before the board for  
3 which the present application is made and that is substantially  
4 related to the qualifications, functions, or duties of the business or  
5 profession for which the present application is made. However,  
6 prior disciplinary action by a licensing board within the preceding  
7 seven years shall not be the basis for denial of a license if the basis  
8 for that disciplinary action was a conviction that has been dismissed  
9 pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425  
10 of the Penal Code or a comparable dismissal or expungement.

11 (b) Notwithstanding any ~~other~~ provision of this code, a person  
12 shall not be denied a license on the basis that the person has been  
13 convicted of a crime, or on the basis of acts underlying a conviction  
14 for a crime, if that person has obtained a certificate of rehabilitation  
15 under Chapter 3.5 (commencing with Section 4852.01) of Title 6  
16 of Part 3 of the Penal Code, has been granted clemency or a pardon  
17 by a state or federal executive, or has made a showing of  
18 rehabilitation pursuant to Section 482.

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

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

32 (e) A board may deny a license regulated by this code on the  
33 ground that the applicant knowingly made a false statement of fact  
34 that is required to be revealed in the application for the license. A  
35 board shall not deny a license based solely on an applicant's failure  
36 to disclose a fact that would not have been cause for denial of the  
37 license had it been disclosed.

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

1 (1) A board issuing a license pursuant to Chapter 3 (commencing  
 2 with Section 5500), Chapter 3.5 (commencing with Section 5615),  
 3 Chapter 10 (commencing with Section 7301), Chapter 20  
 4 (commencing with Section 9800), or Chapter 20.3 (commencing  
 5 with Section 9880), of Division 3, or Chapter 3 (commencing with  
 6 Section 19000) or Chapter 3.1 (commencing with Section 19225)  
 7 of Division 8 may require applicants for licensure under those  
 8 chapters to disclose criminal conviction history on an application  
 9 for licensure.

10 (2) Except as provided in paragraph (1), a board shall not require  
 11 an applicant for licensure to disclose any information or  
 12 documentation regarding the applicant’s criminal history. However,  
 13 a board may request mitigating information from an applicant  
 14 regarding the applicant’s criminal history for purposes of  
 15 determining substantial relation or demonstrating evidence of  
 16 rehabilitation, provided that the applicant is informed that  
 17 disclosure is voluntary and that the applicant’s decision not to  
 18 disclose any information shall not be a factor in a board’s decision  
 19 to grant or deny an application for licensure.

20 (3) If a board decides to deny an application for licensure based  
 21 solely or in part on the applicant’s conviction history, the board  
 22 shall notify the applicant in writing of all of the following:

- 23 (A) The denial or disqualification of licensure.
- 24 (B) Any existing procedure the board has for the applicant to  
 25 challenge the decision or to request reconsideration.
- 26 (C) That the applicant has the right to appeal the board’s  
 27 decision.
- 28 (D) The processes for the applicant to request a copy of the  
 29 applicant’s complete conviction history and question the accuracy  
 30 or completeness of the record pursuant to Sections 11122 to 11127  
 31 of the Penal Code.

32 (g) (1) *A prospective applicant that has been convicted of a*  
 33 *crime may submit to a board, by mail or email, and at any time,*  
 34 *including before obtaining any training or education required for*  
 35 *licensure by that board or before paying any application fee, a*  
 36 *request for a preapplication determination that includes*  
 37 *information provided by the prospective applicant regarding their*  
 38 *criminal conviction.*

39 (2) *Upon receiving a request submitted pursuant to paragraph*  
 40 *(1), a board shall determine if the prospective applicant may be*

1 *disqualified from licensure by the board based on the information*  
2 *submitted with the request, and deliver the determination by mail*  
3 *or email to the prospective applicant within a reasonable time.*

4 ~~(g)~~

5 (h) (1) For a minimum of three years, each board under this  
6 code shall retain application forms and other documents submitted  
7 by an applicant, any notice provided to an applicant, all other  
8 communications received from and provided to an applicant, and  
9 criminal history reports of an applicant.

10 (2) Each board under this code shall retain the number of  
11 applications received for each license and the number of  
12 applications requiring inquiries regarding criminal history. In  
13 addition, each licensing authority shall retain all of the following  
14 information:

15 (A) The number of applicants with a criminal record who  
16 received notice of denial or disqualification of licensure.

17 (B) The number of applicants with a criminal record who  
18 provided evidence of mitigation or rehabilitation.

19 (C) The number of applicants with a criminal record who  
20 appealed any denial or disqualification of licensure.

21 (D) The final disposition and demographic information,  
22 consisting of voluntarily provided information on race or gender,  
23 of any applicant described in subparagraph (A), (B), or (C).

24 (3) (A) Each board under this code shall annually make  
25 available to the public through the board's internet website and  
26 through a report submitted to the appropriate policy committees  
27 of the Legislature deidentified information collected pursuant to  
28 this subdivision. Each board shall ensure confidentiality of the  
29 individual applicants.

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

32 ~~(h)~~

33 (i) "Conviction" as used in this section shall have the same  
34 meaning as defined in Section 7.5.

35 ~~(i)~~

36 (j) This section does not in any way modify or otherwise affect  
37 the existing authority of the following entities in regard to  
38 licensure:

39 (1) The State Athletic Commission.

40 (2) The Bureau for Private Postsecondary Education.



- 1 (3) The California Horse Racing Board.
- 2 ~~(j) This section shall become operative on July 1, 2020.~~

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