

**TITLE 4
BUREAU OF HOUSEHOLD GOODS AND SERVICES**

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

**Substantial Relationship Criteria, § 1380
Criteria for Rehabilitation, § 1381
California Code of Regulations, Title 4, Division 3**

NOTICE IS HEREBY GIVEN that the Bureau of Household Goods and Services (Bureau) is proposing to take the action described in the Informative Digest.

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 no later than Monday, April 6, 2020**, or must be received by the Bureau at any scheduled hearing. Oral comments should be made at the hearing, if any.

AVAILABILITY OF MODIFICATIONS

The Bureau, upon its own motion or at the insistence 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 the 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, 493, and 19034 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC sections 141, 475, 480, 481, 482, 485, 488, 490, 492, 493, 19063, 19064, 19209, and 19210 of said code, the Bureau is considering amending sections 1380 and 1381 of Article 15 of Division 3 of Title 4 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST

Business and Professions Code section 19034 authorizes the Bureau to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to

carry into effect the provisions of the Home Furnishings and Thermal Insulation Act (Act). Business and Professions Code section 141 defines the manner in which record of a disciplinary action taken against a licensee by another state, an agency of the federal government, or another country may be used in a disciplinary action by the Bureau. Additionally, as required under Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), the primary purpose of this proposal is to implement, interpret, and make specific the provisions of BPC sections 141, 475, 480, 481, 482, 485, 488, 490, 492, 493, 19063, 19064, 19209, and 19210, relative to substantial relationship and rehabilitation criteria in the use of criminal history, disciplinary history, professional misconduct, or prior acts evidence in initial licensing approvals or denials. The Bureau is also implementing, interpreting, and making specific the provisions of BPC sections 141, 9841, and 9848, which apply to decisions to suspend, revoke, or discipline licensees, to apply a consistent procedure to those decisions. The Bureau is proposing the following changes:

Amend CCR section 1380 of Article 15 of Division 3 of Title 4 of the CCR (Substantial Relationship Criteria):

The proposed regulation, for purposes of denial, suspension, or revocation of a license, would add professional misconduct and out-of-state discipline as grounds requiring the Bureau to consider substantially related criteria and require the Bureau, in making the substantial relationship determination for a crime, to consider the following criteria: (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 a person holding the license. This proposal would also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws relating to the practice of a licensee under the Act.

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

The proposed regulation would clarify that when considering a license denial or discipline on the ground that the applicant or licensee was convicted of a crime, the Bureau would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the Bureau to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants and licensees who did not complete the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial or discipline was based on something other than a conviction.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF 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 to meeting the requirements of AB 2138, this proposal seeks to improve clarity, transparency, and consistency for applicants and licensees regarding the Bureau's use of their criminal histories. Further, by reducing barriers to licensure, the Bureau anticipates benefits to consumers who may have increased access to products and services that licensees provide.

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 of these topics 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:

The Bureau anticipates there may be an increased cost of the state as a result of amending and adopting 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, which is anticipated to be absorbable within existing resources.

Cost or Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact:

The Bureau 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.

The Bureau has determined this regulatory proposal may have a positive impact on the creation of jobs and new businesses by reducing licensing and employment barriers for people who are rehabilitated, will not result in the elimination of jobs or existing businesses, and have no impact on expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The Bureau estimates that there will be no increased costs for businesses or individuals to comply with the proposed regulations, as there would be fewer restrictions for individuals with criminal convictions to obtain licensure.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

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.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal may have a positive impact on the creation of jobs and new businesses by reducing licensing and employment barriers for people who are rehabilitated, will not result in the elimination of jobs or existing businesses, and have no impact on the expansion of businesses in the State of California.

Benefits of Regulation:

The Bureau has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The public may benefit from the proposal with increased access to licensed professionals, which may benefit the health and welfare of California's consumers. Home Furnishings and Thermal Insulation businesses may benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

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.

The following alternatives were considered:

- Option 1: To pursue a regulatory change that requires the Bureau to find rehabilitation if the applicant or licensee completed their 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 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.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau at 4244 South Market Court, Suite D, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below or by accessing the website listed below.

CONTACT PERSON

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

Name:	Yeaphana La Marr, Policy Manager
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The backup contact person is:

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Website Access: Materials regarding this proposal can be found at www.bhgs.dca.ca.gov.