



MEMORANDUM

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| DATE | August 7, 2014 |
| TO | Psychology Board Members |
| FROM | Jonathan Burke Administrative Services Coordinator |
| SUBJECT | AB 2396 (Bonta): Convictions: Expungement: Licenses |

Background:

On May 16, 2014, the Board of Psychology took an “oppose” position on AB 2396 (Bonta).

Please see attached analysis for detail on this proposed legislation.

Action Requested:

This item is for informational purposes as there have been no substantive changes to the bill. No action is required.

Attachment A is the staff analysis of AB 2396.

Attachment B shows the current language proposed in AB 2396.

Attachment C is the “oppose” letter sent for AB 2396.

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 2396

VERSION: AMENDED MAY 15, 2014

AUTHOR: BONTA

SPONSOR: ALAMEDA COUNTY

BOARD POSITION: OPPOSE

SUBJECT: CONVICTIONS: EXPUNGEMENT: LICENSES

Existing Law:

- 1) Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief and requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she has been convicted. (Penal Code §§ 1203.4, 1203.4a, or 1203.41)
- 2) Existing law provides for the licensure and regulation of Psychology by the Board. Existing law authorizes the board to deny, suspend, or revoke a license on various grounds, including, but not limited to, conviction of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued (BPC §§480, 481, 2963, 2966).

This Bill:

- 1) The bill seeks to remove the ability of DCA boards to deny licenses to applicants with expunged convictions. The Bill seeks to do this by amending Section 480 of the Business & Professions Code to read: "*Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41.*"

- 2) The Board currently cites Section 480 of the Business & Professions Code when denying a license to an applicant who has an expunged conviction. The intent of the legislation is to take away the discretion of the Board and require the licensing of those individuals with expunged convictions.

Comments:

- 1) **Author's Intent:** AB 2396 is designed to reduce employment barriers for people with criminal records who have been rehabilitated. The Act allows them the opportunity to pursue meaningful employment and work towards entering the middle class, instead of struggling in low-wage jobs, or returning to crime.
- 2) **Current Board Practice:** If the Board is prohibited from denying a license based solely on a conviction that has been dismissed pursuant to 1203.4 or a similar dismissal, the Board would be required to conduct an investigation to substantiate the underlying cause for the conviction. If a violation is substantiated the application can be denied and the application case will be transmitted to the AG for filing of a Statement of Issues (SOI) (BPC §485). Once the SOI is filed the matter can be set for hearing before an administrative law judge with the Office of Administrative Hearings (OAH).

Statistical Data
License Denials

FY 12/13 - 7
FY 11/12 - 8
FY 10/11 - 12

Three year average: 9

3) Fiscal:

Investigation: The average cost of an investigation is \$3100.00 (25 hours @ \$124.00 per hour).

AG Hourly rate \$170

The average number of hours for filing of an SOI, preparing for hearing and appearing at hearing is 30.

30 x \$170 = \$5100.00

OAH

ALJ hourly rate \$187.00
 Filing costs \$76.00
 The average number of hours hearing is 7.
 7 x \$187 = \$1309
 Hearing and filing \$1309 + \$76 = \$1385

| | |
|---------------|---------------|
| Investigation | \$3100 |
| AG | \$5100 |
| <u>OAH</u> | <u>\$1385</u> |
| Cost per case | \$9585 |

Nine cases @ \$9585 per case would cost the board approximately \$86,265.50 each year.

Additionally this bill will create an additional obstacle in meeting the Consumer Protection Enforcement Initiative (CPEI) goals. The investigation that would be necessary to substantiate the underlying cause for the conviction will increase the overall processing time for this type of case.

4) Recommended Position: Oppose

3) Support and Opposition.

Support:

- Alameda County (Sponsor)
- Women’s Foundation
- National Employment Law Project
- Lawyers’ Committee for Civil Rights of the San Francisco Bay Area
- Legal Services for Prisoners with Children

Opposition:

- Board of Pharmacy
- Contractor State Licensing Board
- Board of Psychology
- Board of Behavioral Sciences

5) History

Aug. 04 In committee: Placed on APPR. suspense file.
Jun. 24 From committee: Do pass and re-refer to Com. on APPR. (Ayes 5. Noes 3.) (June 23). Re-referred to Com. on APPR.
Jun. 16 In committee: Set, first hearing. Hearing canceled at the request of author.
Jun. 05 Referred to Com. on B., P. & E.D.
May 23 In Senate. Read first time. To Com. on RLS. for assignment.
May 23 Read third time. Passed. Ordered to the Senate. (Ayes 55. Noes 17)

May 15 Read third time and amended. Ordered to third reading.
May 8 Read second time. Ordered to third reading.
May 7 From committee: Do pass. (Ayes 12. Noes 5.) (May 7).
Apr. 30 From committee: Do pass and re-refer to Com. on APPR. (Ayes 11. Noes 2.) (April 29). Re-referred to Com. on APPR.
Apr. 22 In committee: Set, first hearing. Hearing canceled at the request of author.
Apr. 22 Re-referred to Com. on B.,P. & C.P.
Apr. 21 From committee chair, with author's amendments: Amend, and re-refer to Com. on B.,P. & C.P. Read second time and amended.
Apr. 1 Re-referred to Com. on B.,P. & C.P.
Mar. 28 From committee chair, with author's amendments: Amend, and re-refer to Com. on B.,P. & C.P. Read second time and amended.
Mar. 28 Referred to Com. on B.,P. & C.P.
Feb. 24 Read first time.
Feb. 23 From printer. May be heard in committee March 25.
Feb. 21 Introduced. To print.

AMENDED IN ASSEMBLY MAY 15, 2014
AMENDED IN ASSEMBLY APRIL 21, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2396

**Introduced by Assembly Member Bonta
(Coauthor: Assembly Member Skinner)**

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as amended, Bonta. Convictions: expungement: licenses.

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 various grounds, including, but not limited to, conviction of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law prohibits a board from denying a license on the ground that the applicant has committed a crime if the applicant shows that he or she obtained a certificate of rehabilitation in the case of a felony, or that he or she has met all applicable requirements of the criteria of rehabilitation developed by the board, as specified, in the case of a misdemeanor.

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire

period of probation, or has been discharged prior to the termination of the period of probation, or has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the sentence of the court, or has been sentenced to a county jail for a felony, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief and requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

This bill would prohibit a board from denying a license based solely on a conviction that has been dismissed pursuant to the above provisions.

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) A board may deny a license regulated by this code
 4 on the grounds that the applicant has one of the following:
 5 (1) Been convicted of a crime. A conviction within the meaning
 6 of this section means a plea or verdict of guilty or a conviction
 7 following a plea of nolo contendere. Any action that a board is
 8 permitted to take following the establishment of a conviction may
 9 be taken when the time for appeal has elapsed, or the judgment of
 10 conviction has been affirmed on appeal, or when an order granting
 11 probation is made suspending the imposition of sentence,
 12 irrespective of a subsequent order under the provisions of Section
 13 1203.4, 1203.4a, or 1203.41 of the Penal Code.
 14 (2) Done any act involving dishonesty, fraud, or deceit with the
 15 intent to substantially benefit himself or herself or another, or
 16 substantially injure another.
 17 (3) (A) Done any act that if done by a licentiate of the business
 18 or profession in question, would be grounds for suspension or
 19 revocation of license.
 20 (B) The board may deny a license pursuant to this subdivision
 21 only if the crime or act is substantially related to the qualifications,
 22 functions, or duties of the business or profession for which
 23 application is made.

1 (b) Notwithstanding any other provision of this code, a person
2 shall not be denied a license solely on the basis that he or she has
3 been convicted of a felony if he or she has obtained a certificate
4 of rehabilitation under Chapter 3.5 (commencing with Section
5 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she
6 has been convicted of a misdemeanor if he or she has met all
7 applicable requirements of the criteria of rehabilitation developed
8 by the board to evaluate the rehabilitation of a person when
9 considering the denial of a license under subdivision (a) of Section
10 482.

11 (c) Notwithstanding any other provisions of this code, a person
12 shall not be denied a license solely on the basis of a conviction
13 that has been dismissed pursuant to Section 1203.4, 1203.4a, or
14 1203.41 *of the Penal Code*.

15 (d) A board may deny a license regulated by this code on the
16 ground that the applicant knowingly made a false statement of fact
17 that is required to be revealed in the application for the license.

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May 21, 2014

The Honorable Rob Bonta
California State Assembly
State Capitol, Room 6025
Sacramento, CA 95814

RE: AB 2396 - **Oppose**

Dear Assembly Member Bonta,

At its May 16, 2014 meeting, the Board of Psychology (Board) took an oppose position on AB 2396 (Bonta).

AB 2396 would prevent the Board from denying a professional license based solely on a criminal conviction that has been withdrawn, set aside, or dismissed by the court.

The Board currently cites Section 480 of the Business & Professions Code when denying a license to an applicant who has an expunged conviction. If the Board is prohibited from denying a license based solely on a conviction that has been dismissed pursuant to 1203.4 or a similar dismissal, the Board would be required to conduct an investigation to substantiate the underlying cause for the conviction. This would have a fiscal impact on the Board through increased utilization of investigators, the Attorney General's Office and staff resources. The alternative would be to license those applicants who have an expunged conviction that we have determined would potentially pose a danger to the public.

The Board has concerns that this bill would impede the Board's ability to protect consumers of psychological services in the State of California.

If you would like to discuss the Board's position, please feel free to contact the Board's Administrative Coordinator, Jonathan Burke, at (916) 574-7137.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole J. Jones".

NICOLE J. JONES
Chair, Policy and Advocacy Committee
Board of Psychology

cc:

Board Members

Tracy Rhine, Deputy Director, Legislative and Policy Review, Department of Consumer Affairs