



MEMORANDUM

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| DATE | August 7, 2014 |
| TO | Psychology Board Members |
| FROM | Jonathan Burke Administrative Services Coordinator |
| SUBJECT | AB 1702 (Maienschein): Professions and Vocations: Incarceration |

Background:

On May 16, 2014, the Board of Psychology took an oppose position on AB 1702.

Action Requested:

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

Attachment A is the staff analysis of AB 1702.

Attachment B shows the current language proposed in AB 1702.

Attachment C is the “oppose” letter for AB 1702.

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 1702

VERSION: AMENDED APRIL 23, 2014

AUTHOR: MAIENSCHIN

SPONSOR: AFSCME LOCAL 2620

BOARD POSITION: OPPOSE

SUBJECT: PROFESSIONS AND VOCATIONS: INCARCERATION

Overview:

This bill would prohibit a board under the Department of Consumer Affairs (DCA) from denying or delaying an application solely on the grounds that the applicant was incarcerated.

Existing Law:

1) Permits a board under DCA to deny a license on the grounds that the applicant has been convicted of a crime, only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which they are applying for licensure. (Business and Professions Code (BPC) §480)

2) Permits a board to suspend, revoke, or exercise any authority to discipline a licensee for conviction of a crime only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license is issued. (BPC §490)

3) States that a crime or act is substantially related to the qualifications, functions, or duties of a person holding a license if to a substantial degree it evidences present or potential unfitness of a person to perform the functions authorized by his or her license in a manner consistent with public health, safety, or welfare. (California Code of Regulations (CCR) Title 16, Division 18, §1812)

This Bill:

1) Prohibits a board from delaying the processing of an application, or denying a license to, an otherwise eligible applicant who has satisfied any licensing requirements while incarcerated, solely based on the fact that the applicant was incarcerated. (BPC §480.5(a))

2) Allows for delay in processing, or denial of licensure, if the incarceration was for a crime substantially related to the qualifications, functions, or duties of the business or profession. (BPC §4980.5(a))

3) States that this provision does not apply to a petition for reinstatement of a license. (BPC §480.5(b))

4) States that this provision does not apply to the licensure of chiropractors. (BPC §480.5(c))

Comment:

1) Background. The author's office is running this bill in an effort to reduce crime and reward rehabilitation. They note that two-thirds of former inmates will re-offend, many within the first year of being released from prison.

The author notes studies that show if an inmate learns vocational skills in prison, he or she is less likely to re-offend upon release. However, if the inmate learns vocational skills that require a license, he or she often must wait longer to receive a license, because the law allows licensing boards to impose licensing restrictions on those who have criminal convictions.

2) Intent Unclear. The author's office cites a problem with the law giving licensing boards the power to impose additional restrictions on those who have been convicted of a crime. However, the Board may only do this if the conviction is substantially related to the practice of the profession. This bill does not remove the provision that discipline can be taken if the conviction was substantially related to the profession.

3) Delays in Processing Time. This bill prohibits a board from delaying the processing of an application based on the fact that the applicant was incarcerated.

All applicants with a conviction or other disciplinary action are automatically routed to the Board's Enforcement Division for further investigation. For these applicants, there will be a delay simply because additional staff time is needed to determine if the crime was "substantially related" and to determine if disciplinary measures are necessary.

Delays due to the enforcement process can vary from weeks to several months, depending on the complexity of the case. An applicant with a conviction from two decades ago that is not substantially related will likely be cleared quickly, while an applicant with a recent conviction may take longer while investigators gather documentation and review the facts of the case.

4) Board Position: Oppose

5) Support and Opposition.

Support:

- American Federation of State, County, and Municipal Employees (AFSCME) Local 2620 (Sponsor)
- Women's Foundation
- CA Communities United Institute
- CA Correctional Peace Officers Association
- CA Board of Accountancy
- Legal Services for Prisoners with Children
- Riverside Sheriffs' Association
- L.A. County Probations Officers Union
- California Catholic Conference, Inc.
- Over 50 letter from individuals

Support if amended:

- Board of Behavioral Sciences

Opposition:

- Board of Psychology

5) History

2014

- Jul. 01** Read second time. Ordered to third reading.
- Jun. 30** From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
- Jun. 17** From committee: Do pass and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (June 16). Re-referred to Com. on APPR.
- Jun. 05** In committee: Hearing postponed by committee.
- May 22** Referred to Com. on B., P. & E.D.
- May 15** In Senate. Read first time. To Com. on RLS. for assignment.
- May 15** Read third time. Passed. Ordered to the Senate. (Ayes 78. Noes 0.)
- May 8** Read second time. Ordered to consent calendar.
- May 7** From committee: Do pass. To consent calendar. (Ayes 17. Noes 0.) (May 7).
- Apr. 24** Re-referred to Com. on APPR.
- Apr. 23** Read second time and amended.
- Apr. 22** From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 14. Noes 0.)
- Feb. 20** Referred to Com. on B.,P. & C.P.
- Feb. 14** From printer. May be heard in committee March 16.
- Feb. 13** Read first time. To print

AMENDED IN ASSEMBLY APRIL 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1702

Introduced by Assembly Member Maienschein
(Coauthor: Senator Mitchell)

February 13, 2014

An act to add Section 480.5 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1702, as amended, Maienschein. Professions and vocations: incarceration.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, among other entities. Existing law establishes various eligibility criteria needed to qualify for a license and authorizes a board to deny a license on the grounds that the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

This bill would provide that an individual who has satisfied any of the requirements needed to obtain a license while incarcerated, who applies for that license upon release from incarceration, and who is otherwise eligible for the license shall not be subject to a delay in processing the application or a denial of the license ~~solely based on the prior incarceration, except when the incarceration was for a crime substantially related to the qualifications, functions, or duties of the business or profession.~~ *on the basis that some or all of the licensure requirements were completed while the individual was incarcerated.*

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 480.5 is added to the Business and
- 2 Professions Code, to read:
- 3 480.5. (a) An individual who has satisfied any of the
- 4 requirements needed to obtain a license regulated under this ~~code~~
- 5 *division* while incarcerated, who applies for that license upon
- 6 release from incarceration, and who is otherwise eligible for the
- 7 license shall not be subject to a delay in processing his or her
- 8 application or a denial of the license solely ~~based on the prior~~
- 9 ~~incarceration, except as provided in Section 480.~~ *on the basis that*
- 10 *some or all of the licensure requirements were completed while*
- 11 *the individual was incarcerated.*
- 12 (b) Nothing in this section shall be construed to apply to a
- 13 petition for reinstatement of a license *or to limit the ability of a*
- 14 *board to deny a license pursuant to Section 480.*
- 15 (c) This section shall not apply to the licensure of individuals
- 16 under the initiative act referred to in Chapter 2 (commencing with
- 17 Section 1000) of Division 2.

Board of Psychology

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May 21, 2014

The Honorable Brian Maienschein
California State Assembly
State Capitol, Room 3098
Sacramento, CA 95814

RE: AB 1702 - **Oppose**

Dear Assembly Member Mainenshein,

At its May 16, 2014 meeting, the Board of Psychology (Board) took an oppose position on AB 1702 (Maienschein).

AB 1702 specifies that an individual who has satisfied the requirements for licensure while incarcerated and who applies for licensure after being released from incarceration shall not have his or her application delayed or denied solely on the basis that some or all of the requirements were completed while the individual was incarcerated.

All applicants with a conviction, served incarceration, or were subject to other disciplinary action are automatically routed to the Board's Enforcement Division for further investigation. For these applicants, there will be a delay simply because additional staff time is needed to determine if the crime was "substantially related" and to determine if disciplinary measures are necessary. Delays due to the enforcement process can vary from weeks to several months, depending on the complexity of the case.

The Board has concerns that this bill will cause confusion amongst applicants who experience a delay due to a conviction and the subsequent incarceration.

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