

# AB 2138 (Chiu): Fair Chance for Occupational Licensing

Revised 4/30/2020

Page 1

## 1. What is an occupational license?

Certain professions or jobs require a government issued license, clearance, exemption, registration, or regulation\* in order to be allowed to do the job. These rules are intended to protect the public and safety but can be overly restrictive and create more barriers for people who want to work in these jobs.

Some examples of jobs that require a license are: real estate agents, security guards, barbers, hair stylists, home health aides, caregivers, psychologists, insurance agents, cosmetologists, nurses, doctors, lawyers, paramedics, massage therapists, clinical social workers, and **many more**.

*\*License is used as a catchall phrase for government oversight and regulation in this flyer.*

## 2. What does California Assembly Bill 2138 (AB 2138) do? When does it go into effect?

AB 2138 changes the law about how criminal records can be considered and gives formerly incarcerated people a fair chance at obtaining licensure under the **Department of Consumer Affairs (DCA)**. AB 2138 was sponsored by the Anti-Recidivism Coalition, East Bay Community Law Center, Legal Services for Prisoners with Children, Root & Rebound and supported by a coalition of 50 organizations.

Governor Brown signed AB 2138 in September 2018 and **AB 2138 is effective as of July 1, 2020**.

## 3. Does AB 2138 apply to all occupational licenses?

No, AB 2138 only applies to licenses that are regulated by the DCA\*. The DCA is the largest oversight Department and regulates 39 different Boards\*\*. For a list of DCA regulated Boards, please visit [https://www.dca.ca.gov/about\\_us/entities.shtml](https://www.dca.ca.gov/about_us/entities.shtml).

*\*AB 2138 does not modify existing law for these 3 Boards under DCA: (1) Bureau for Private Postsecondary Education, (2) State Athletic Commission, and (3) the California Horse Racing Board<sup>1</sup>.*

*\*\*Board is used interchangeably with Agency, Bureau, Commission, Department, etc. in this flyer.*

## 4. I have a criminal record. What should I do if I am interested in applying for occupational licensure?

First, clear your eligible criminal history by obtaining Penal Code §§ 1203.4, 1203.4a, 1203.41, or 1203.42 dismissals (commonly called “expungement”) or other record clearance. Please refer to this list of providers: <https://ebclc.org/reentry-legal-services/> for services in the **county where you were convicted**.

Second, discuss your employment goals with a competent attorney who is familiar with occupational licensing requirements and criminal law to determine if you can eventually work in the profession. You may not want to spend time and money for education or training if you ultimately cannot work in the job.

Third, once you have consulted with an attorney about your employment goals, complete all the education requirements for the license and apply. See page 4 for a list of organizations.

<sup>1</sup> Assem. Bill 2138, 2017-2018 Reg. Sess., ch. 995, 2018 Cal. Stat.

*This flyer provides general information about AB 2138 and does not constitute legal advice. It is recommended that you consult with a competent attorney about the particulars of your case and history and do not rely solely on this flyer.*

# AB 2138 (Chiu): Fair Chance for Occupational Licensing

Revised 4/30/2020

Page 2

## 5. When should I apply for licensure?

AB 2138 goes into effect on July 1, 2020. If you have criminal history, AB 2138 protections will apply **after July 1, 2020** for most DCA regulated Boards.

AB 2138 does **not** apply to non-DCA regulated Boards. If you are applying to a non-DCA regulated Board, such as the Department of Social Services (DSS) or the Department of Insurance (DOI) or other Boards, there has been no change in law affecting how these boards review criminal history information. Please see number 4 above for more information.

## 6. How does AB 2138 help formerly incarcerated people?

**Most** Boards under the DCA cannot **deny** a license on the basis of:

- (1) **Many\*** criminal convictions that are 7 years or older,
- (2) Convictions that have been dismissed per Penal Code §§ 1203.4, 1203.4a, 1203.41, or 1203.42, (commonly called “expungement”),
- (3) Convictions for which the person has received a Certificate of Rehabilitation (COR) or a pardon, or
- (4) Arrests, diversions, deferred entry of judgment, infractions, citations, or juvenile adjudications.

***\*The 7-year rule does not apply to:***

- (1) Serious felonies<sup>2</sup>,
- (2) Convictions requiring Tier 2 or Tier 3 sex offender registration<sup>3</sup> under Penal Code § 290, or
- (3) Felony financial crimes if the person is seeking licensure under these 6 boards: CA Board of Accountancy<sup>4</sup>, Contractors State License Board<sup>5</sup>, Professional Fiduciaries Bureau<sup>6</sup>, Private Investigators under the Bureau of Security and Investigative Services<sup>7</sup>, Cemetery and Funeral Bureau<sup>8</sup>, and the Department of Real Estate<sup>9</sup>.

### **Convictions that can be considered:**

If the date of the conviction occurred within the last 7 years or is an exception to the 7-year rule, the conviction must be **substantially related** to the qualifications, functions, or duties of the business or profession to which the application is submitted.

Felony financial crimes must be **directly and adversely related to the fiduciary** qualifications, functions, or duties of the business or profession for the 6 Boards listed above.

<sup>2</sup> Cal. Penal Code § 1192.7(c).

<sup>3</sup> Sen. Bill 384, 2017-2018 Reg. Sess., ch. 541, 2018 Cal. Stat. **NB: SB 384 goes into effect on January 1, 2021.**

<sup>4</sup> Cal. Business and Professions Code § 5000 *et seq.*

<sup>5</sup> Cal. Business and Professions Code § 7000 *et seq.*

<sup>6</sup> Cal. Business and Professions Code § 6500 *et seq.*

<sup>7</sup> Cal. Business and Professions Code § 7512 *et seq.*

<sup>8</sup> Cal. Business and Professions Code § 7600 *et seq.*

<sup>9</sup> Cal. Business and Professions Code § 10000 *et seq.*

*This flyer provides general information about AB 2138 and does not constitute legal advice. It is recommended that you consult with a competent attorney about the particulars of your case and history and do not rely solely on this flyer.*

# AB 2138 (Chiu): Fair Chance for Occupational Licensing

Revised 4/30/2020

Page 3

## 7. What do I need to disclose about my criminal history when I apply to a DCA regulated Board?

**Most** DCA regulated Boards **cannot ask** about criminal history information on the licensure application after 7/1/2020. Instead, these Boards will run a fingerprint background check. However, the California Architects Board<sup>10</sup>, Landscape Architects Technical Committee<sup>11</sup>, Board of Barbering and Cosmetology<sup>12</sup>, Bureau of Household Goods and Services<sup>13 14 15</sup>, and Bureau of Automotive Repair<sup>16</sup> **may ask** applicants about criminal history on the licensure application. Beginning January 1, 2021<sup>17</sup>, the California Architects Board and the Landscape Architects Technical Committee will run a fingerprint background check as well.

When you apply for a license, any of these Boards may ask for mitigating (favorable) information regarding your criminal history to determine if the crime is substantially related to the qualifications, duties, or functions of the license or to evaluate your rehabilitation. Disclosing any additional information about your criminal history and mitigating information is **voluntary**. If you choose to not disclose, the decision to not disclose any information should not be used as a factor to grant or deny you an application.

Read the application carefully and answer the question(s) asked. Be truthful and accurate. If you do not understand the questions asked or you need help, please contact a legal services provider for assistance. You may contact an organization listed on page 4.

## 8. What happens if I apply for licensure with DCA and am denied because of my conviction history?

If you are denied a license because of your criminal history, the Board must notify you in writing of:

- (1) The denial or disqualification of your license application,
- (2) Any existing procedure the Board has for you to challenge the decision or to request reconsideration,
- (3) Your right to appeal the decision, and
- (4) The fact that you can request a copy of the complete conviction history and question the accuracy of the record.

You should **review the criminal history** and provide any missing information. For example, Penal Code § 1203.4 dismissals are commonly missing from fingerprint background checks. You can provide proof of the missing information to the Board to challenge the accuracy of the record.

If the background check is correct, you have the **right to appeal** the decision by going to a hearing before an Administrative Law Judge. At the hearing, you can present evidence, witnesses, and testimony to show that your criminal history is not related to the license you are seeking and that you are rehabilitated.

<sup>10</sup> Cal. Business and Professions Code § 5500 *et seq.*

<sup>11</sup> Cal. Business and Professions Code § 5615 *et seq.*

<sup>12</sup> Cal. Business and Professions Code § 7301 *et seq.*

<sup>13</sup> Cal. Business and Professions Code § 9800 *et seq.*

<sup>14</sup> Cal. Business and Professions Code § 19000 *et seq.*

<sup>15</sup> Cal. Business and Professions Code § 19225 *et seq.*

<sup>16</sup> Cal. Business and Professions Code § 9880 *et seq.*

<sup>17</sup> Sen. Bill 608, 2019-2020 Reg. Sess., ch. 376, 2020 Cal. Stat.

*This flyer provides general information about AB 2138 and does not constitute legal advice. It is recommended that you consult with a competent attorney about the particulars of your case and history and do not rely solely on this flyer.*

# AB 2138 (Chiu): Fair Chance for Occupational Licensing

Revised 4/30/2020

Page 4

## 9. Who can I contact for help with an occupational licensing matter related to my criminal history?

Depending on where you live, you will be assigned to a local Office of Administrative Hearings location<sup>18</sup> that serves your county. You may contact an organization listed below for assistance. **Please note that each provider listed below may have capacity, eligibility, geographic, income, and other restrictions and may not be able to assist you.**

<p><b>A New Way of Life Reentry Project</b>                  Website: <a href="http://www.anewwayoflife.org">www.anewwayoflife.org</a>                  Phone: 323-563-3575</p>	<p><b>Legal Services of Northern California</b>                  Website: <a href="http://www.lsn.net">www.lsn.net</a>                  Phone: 866-815-5990</p>
<p><b>Alameda County Public Defender's Office, Clean Slate Program</b>                  Website: <a href="http://www.co.alameda.ca.us/defender/">http://www.co.alameda.ca.us/defender/</a>                  Phone: 510-268-7400</p>	<p><b>Neighborhood Legal Services of Los Angeles</b>                  Website: <a href="https://www.nlsla.org/">https://www.nlsla.org/</a>                  Phone: 800-433-6251</p>
<p><b>Bay Area Legal Aid</b>                  Website: <a href="http://www.baylegal.org">www.baylegal.org</a>  <b>Oakland</b> Office Phone: 1-800-551-5554  <b>Richmond</b> Office Phone: 510-233-9954</p>	<p><b>Public Counsel</b>                  Website: <a href="http://www.publiccounsel.org/">http://www.publiccounsel.org/</a>                  Phone: (213) 385-2977</p>
<p><b>California Rural Legal Assistance</b>                  Website: <a href="http://www.crla.org">www.crla.org</a>  <b>Marysville</b> Office* Phone: 530-742-5191                  *Limited to residents of Colusa, Sutter, and Yuba counties  <b>Oxnard</b> Office** Phone: 805-486-1068                  **Limited to residents of Ventura County</p>	<p><b>Rehabilitation and Inclusion Council of the National Association of Social Workers, CA Chapter</b>                  Website: <a href="http://www.naswca.org/">http://www.naswca.org/</a>                  Email: <a href="mailto:RICouncil@naswca.org">RICouncil@naswca.org</a></p>
<p><b>Community Legal Services in East Palo Alto</b>                  Website: <a href="http://www.clsepa.org">www.clsepa.org</a>                  Phone: 650-326-6440</p>	<p><b>Root &amp; Rebound</b>                  Website: <a href="https://www.rootandrebond.org/">https://www.rootandrebond.org/</a>                  Phone: 510-279-4662</p>
<p><b>East Bay Community Law Center</b>                  Website: <a href="http://www.ebclc.org">www.ebclc.org</a>                  Phone: 510-548-4040</p>	
<p><b>Legal Aid Foundation of Los Angeles</b>                  Website: <a href="https://lafla.org/">https://lafla.org/</a>                  Phone: 213-640-3904                  Email: <a href="mailto:ngrinstein@lafla.org">ngrinstein@lafla.org</a></p>	

<sup>18</sup> <https://www.dgs.ca.gov/OAH/Contact#ViewBag.JumpTo>

*This flyer provides general information about AB 2138 and does not constitute legal advice. It is recommended that you consult with a competent attorney about the particulars of your case and history and do not rely solely on this flyer.*

# AB 2138 (Chiu): Fair Chance for Occupational Licensing

Revised 4/30/2020

Page 5

*This flyer provides general information about AB 2138 and does not constitute legal advice. It is recommended that you consult with a competent attorney about the particulars of your case and history and do not rely solely on this flyer.*