

**BUREAU OF CANNABIS CONTROL
CALIFORNIA CODE OF REGULATIONS TITLE 16, DIVISION 42
MEDICINAL AND ADULT-USE CANNABIS REGULATION
INITIAL STATEMENT OF REASONS**

SUBJECT MATTER OF PROPOSED REGULATIONS: Medicinal and Adult-Use Cannabis Regulation Application Process Requirements

SECTIONS AFFECTED: Title 16, California Code of Regulations (CCR), sections 5002, 5017, 5021 and 5600

BACKGROUND

The Bureau of Cannabis Control (Bureau) is under the California Department of Consumer Affairs (DCA) and is charged with licensing certain types of commercial cannabis businesses. On September 30, 2018, Assembly Bill 2138 (AB 2138) (Chiu, Chapter 995, Statutes of 2018), was signed by Governor Brown. AB 2138 amended the language of sections of the Business and Professions Code (BPC) relating to the license application process for bureaus within DCA. Most notably, the changes to the statutes prohibit bureaus from requiring applicants for licensure to disclose information or documentation regarding the applicant's criminal history. Additionally, if a bureau decides to deny an application for licensure, the bureau must provide the applicant with notice of the denial, including the reason for the denial as well as instructions for appealing the decision and the process for receiving a copy of the applicant's conviction history.

STATEMENT OF PURPOSE, PROBLEM, RATIONALE, AND BENEFITS

The proposed regulations implement new requirements imposed by AB 2138 to the Bureau's license application process. The current language of the regulations does not comply with the amended statutory language. The Bureau has determined that amending the regulations is required to ensure compliance with the statutory changes.

SPECIFIC PURPOSE, NECESSITY, AND RATIONALE FOR ADOPTION

The Bureau proposes amending sections 5002, 5017, 5021 and 5600, of Division 42, of Title 16, of the California Code of Regulations, as follows.

16 CCR 5002, Subsection (c)(20)(L). Annual License Application Requirements

The proposed amendment to section 5002 subsection (c)(20)(L) of the Bureau's regulations removes the requirement that an applicant submit a detailed description of the owner's criminal convictions, as part of the license application. Under AB 2138, BPC section 480 was amended to prohibit a bureau from requiring an applicant for licensure to disclose any information or documentation regarding the applicant's criminal history.

Section 5002 subsection (c)(20)(L) has also been amended to add language to further clarify an applicant's ability to voluntarily provide mitigating information regarding the

owner applicant's criminal history. The language regarding mitigating information has been amended to more closely reflect the language in BPC section 480, as amended by AB 2138.

Additionally, language was added to section 5002 subsection (c)(20)(L) to clarify that disclosure of mitigating information is voluntary and that the decision not to disclose is not a factor in the decision to grant or deny the license. The language of the subsection has also been amended to provide additional examples of dismissals under specific Penal Code sections that would be accepted by the Bureau as a form of mitigating information. These provisions reflect the amended language of BPC section 480, as amended by AB 2138.

The reference list has been amended to include BPC 480 so the licensee or applicant is aware that provisions in the section are also based on this code section.

16 CCR 5017. Substantially Related Offenses and Criteria for Rehabilitation

AB 2138 amends BPC sections 481 and 493 to specify three criteria that the Bureau must consider when evaluating whether a crime is substantially related to the regulated business or profession for purposes of denial, suspension, or revocation of a license. The three criteria set out in AB 2138 are: (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 the particular license the applicant seeks or the licensee holds. Section 5017 subsection (a) of the Bureau's regulations has been amended to include these three factors to comply with the statute.

Section 5017 subsection (b), formerly subsection (a), has been amended to provide the definition of the term conviction as it will be used in the section. The definition is taken from BPC Section 7.5, which was amended by AB 2138. The definition was added to the section to provide additional clarity. Suspension and revocation have been added to the list of items for which rehabilitation shall be considered, as required under AB 2138, to better comply with these revisions and allow the greatest number of applicants to receive the benefits of AB 2138. Additionally, the phrase but not limited to, has been inserted to clarify for the applicants and licensees that the list of convictions from the statute may not be exhaustive as the Bureau will consider the statutorily required factors in new subsection (a) to determine substantial relationship.

Section 5017 subsection (c) is the former subsection (b) and has been renumbered to account for the new subsection (a).

Section 5017 subsection (d), formerly subsection (c), has been revised to add "act or professional misconduct" after "convicted of a criminal offense," to better reflect the revisions to the BPC under AB 2138, since it added "professional misconduct" to the list of items that must be considered in these circumstances. This addition has also been made in subsections (4) and (5) to better reflect the revisions required by AB 2138, as stated above.

Section 5017 subsection (d)(1) has changed the word “severity” to “gravity” to again be consistent with AB 2138’s revisions to the relevant BPC sections providing relief to those applicants and those seeking relief from their criminal pasts to be able to apply for and seek relief from prior discipline to obtain licensure from the Bureau.

Section 5017 subsection (d)(7) has been revised to add “... 1203.42, has been granted clemency or a pardon by a state or federal executive, or pursuant to another state's similar law(s),” to be consistent with the language added to other DCA board and bureau’s regulations and the intent of AB 2138 in providing a license applicant, or a suspended or revoked licensee, with the most available options to clear their path for licensure by the Bureau.

Section 5017 subsection (d)(8) has been revised to add “pursuant to BPC 482” to better comply with AB 2138 by providing the applicant or previously disciplined licensee a clear roadmap that they can follow to obtain a license.

The reference list has been amended to include BPC 141, 480, and 481 so the licensee is aware that provisions in the section are also based on these code sections.

16 CCR 5021, Subsection (d). Denial of License

Section 5021 subsection (d) of the Bureau’s regulations has been added to the section. Subsection (d) indicates that if an application is denied due to an owner’s conviction history, the Bureau will notify the applicant of this fact and also provide the applicant with information on how to request a copy of their conviction history and how to question the accuracy of the record. This requirement has been added to comply with the amendments to BPC section 480, as amended by AB 2138, to add this requirement for bureaus within DCA. Since the Bureau is within DCA, the Bureau is required to make this change to the Bureau’s application process.

16 CCR 5600, subsection (g)(19)(L). Cannabis Event Organizer License

Proposed amendments to section 5600 of the Bureau’s regulations are intended to mirror the proposed amendments to section 5002, above. Both sections 5002 and 5600 provide the requirements for license applications. The revisions to the license application requirements, in these sections, are necessary due to the passage of AB 2138.

Section 5600 subsection (g)(19)(L) has been amended to remove the requirement that an applicant submit a detailed description of the owner’s criminal convictions as part of the license application. Under AB 2138, BPC section 480 was amended to prohibit a bureau within DCA from requiring an applicant for licensure to disclose any information or require documentation regarding the applicant’s criminal history. Since the Bureau is within DCA, the Bureau is required to make this change to the Bureau’s application requirements.

Section 5600 subsection (g)(19)(L) has also been amended to add language to further clarify an applicant’s ability to provide mitigating information regarding the owner applicant’s criminal history. The language regarding mitigating information has been

amended to more closely reflect the language in BPC section 480, as amended by AB 2138.

Additionally, language was added to section 5600 subsection (g)(19)(L) to clarify that the disclosure of mitigating information is voluntary and that the decision not to disclose is not a factor in the decision to grant or deny the license. The language of the subsection has also been amended to provide additional examples of dismissals under specific Penal Code sections that would be accepted by the Bureau as a form of mitigating information. These provisions reflect the amended language of BPC section 480, as amended by AB 2138.

The reference list has been amended to include BPC section 480 so the licensee or applicant is aware that provisions in the section are also based on this code section.

Incorporation by Reference

No documents have been incorporated by reference.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

No technical, theoretical, or empirical studies, reports, or similar documents were relied on for this rulemaking process.

Underlying Data

1. AB 2138 (Chapter 995, Statutes of 2018)

ECONOMIC IMPACT AND ASSESSMENT

Business Impact

The proposed regulation will not have a significant adverse economic impact on businesses as the regulations do not adversely impact all cannabis businesses. This initial determination is because this regulation is based on the requirements of AB 2138. The purpose of AB 2138 is to reduce barriers for licensure for applicants and licensees with criminal histories or license discipline if they can demonstrate evidence of rehabilitation; it does not impose more rigorous requirements on the licensure process. The bill and corresponding regulations will not eliminate businesses and could possibly lead to individuals being qualified to be owners of license.

Economic Impact Assessment

The Bureau does not anticipate the creation or elimination of jobs or businesses, or the expansion of existing businesses, as a result of the proposal. The Bureau will continue to receive criminal history information regarding convictions as provided for by statute. The Bureau anticipates that applicants and licensees with convictions will voluntarily provide rehabilitation information to the Bureau to ensure all aspects of the person's rehabilitation can be properly considered by the Bureau in its evaluation.

Currently, the Bureau can only issue or discipline a license if an applicant owner or licensee's conviction is substantially related to the qualifications, functions, and duties of the license. Additionally, the law for cannabis licenses only requires persons with a certain level of ownership or operational responsibility to be subject to evaluation of criminal history information. Thus, the Bureau does not anticipate the proposal will lead to an overall increase in the creation of jobs or licensed businesses, or the expansion of businesses currently doing business in California.

This regulatory proposal benefits the health and welfare of California residents because it will not eliminate businesses and the Bureau will be able to continue to consider factors of rehabilitation in evaluating suitability for licensure.

This regulatory proposal does not affect worker safety because it seeks to increase the ability of some individuals to obtain a Bureau license with past convictions or discipline if they meet certain criteria and show evidence of rehabilitation. It does not require the Bureau to issue a license to those with recent substantially related convictions or serious felony convictions.

This regulatory proposal does not benefit or negatively impact the State's environment because the proposed regulatory action does not involve any topic that induces harm or benefit to the environment in the State.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Bureau has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: The Bureau anticipates increased costs to the state as a result of adopting and amending the sections identified in the regulatory proposal. Any workload and costs are anticipated to be minor and absorbable within existing resources.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500, *et seq.*: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Effect upon Housing: There is no effect upon housing.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Option 1: Pursue a regulatory change that requires the Bureau to find rehabilitation if the applicant or licensee completed the terms of their criminal probation or parole. This alternative was rejected because the Bureau believes that reviewing each individual's conviction and rehabilitation information utilizing multiple criteria better indicates rehabilitation and ensures no danger to the public's health, safety, and welfare.
2. Option 2: Not adopt the regulations. This alternative was rejected because AB 2138 requires the Bureau to make amendments to its regulations to implement its provisions for its implementation.