

**BUREAU OF CANNABIS CONTROL
CALIFORNIA CODE OF REGULATIONS TITLE 16, DIVISION 42
MEDICINAL AND ADULT-USE CANNABIS REGULATION
NOTICE OF PROPOSED RULEMAKING**

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

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

Notice is hereby given that the Bureau of Cannabis Control (Bureau) proposes to adopt the proposed amended regulations, described below, after considering all comments, objections, and recommendations regarding the proposed action. The Bureau, upon its own motion or at the request 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 inspection and copying 15 days prior to its adoption from the person designated in this Notice as 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.

All of the proposed text sections and documents incorporated by reference are proposed to be added to the California Code of Regulations (CCR), under Division 42 of Title 16.

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 before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Bureau. Written comments, including those sent by mail or e-mail to the addresses listed below. **Comments submitted by email must be received by the Bureau at its office by 5:00 p.m. on December 1, 2020.**

Submit comments to:

Kaila Fayne
Bureau of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
E-mail: BCC.comments@dca.ca.gov

AUTHORITY AND REFERENCE

Business and Professions Code (BPC) section 26013 authorizes the Bureau to adopt regulations for the licensing of commercial cannabis activity. Assembly Bill 2138 (Chiu, Chapter 995, Statutes of 2018) (AB 2138) added, repealed or amended BPC sections 7.5, 480, 480.2, 481, 482, 488, 493, and 11345.2. These amendments to the statutory sections altered the license application requirements for bureaus under the Department of Consumer Affairs (DCA).

The proposed regulations implement the statutory changes from AB 2138 into the Bureau's license application and renewal processes; specifically amending 16 CCR sections 5002, 5017, 5021, and 5600. The provisions within AB 2138 become operative on July 1, 2020.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

The Bureau is a regulatory agency under the DCA and is charged with licensing certain types of commercial cannabis businesses. On September 30, 2018, AB 2138 was signed by the Governor, with the intent of removing some of the licensing and employment barriers that those with prior criminal convictions or disciplinary actions often encounter if they can demonstrate rehabilitation. AB 2138 amended the language of sections of the BPC relating to the license application process for bureaus within the 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 applicant 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.

AB 2138 also amends BPC section 480 to prohibit a bureau from denying a license to applicants based on a criminal conviction or the acts underlying a conviction if the applicant makes a showing of rehabilitation. The amendments to BPC section 482 require bureaus to consider, when determining whether to deny, suspend, or revoke a license, whether an applicant or licensee has made a showing of rehabilitation, if the person has either completed the criminal sentence without a parole or probation violation, or if the person is rehabilitated based on the bureau's rehabilitation criteria.

BPC section 480 has also been amended to allow a bureau to deny a license, in relevant part, on the grounds the applicant was convicted of a crime or has been subject to formal discipline if:

1. The conviction was in the past seven years and is substantially related to the qualifications, functions, or duties of the business or profession; or
2. The conviction is substantially related to the qualifications, functions, or duties of the business or profession and was for a serious felony, as defined in Penal Code section 1192.7, and certain specified sex offenses, even if the conviction occurred more than seven years ago; or
3. The applicant is presently incarcerated or was released from incarceration within the last seven years for a crime that is substantially related to the qualifications, functions, or duties of the business or profession; or
4. The applicant was released from incarceration more than seven years ago for a crime that is substantially related to the qualifications, functions, or duties of the business or profession and the conviction was for a serious felony, as defined in Penal Code section 1192.7, and certain specified sex offenses; or
5. The applicant has been subject to formal discipline by a licensing board or bureau in or outside of California within the preceding seven years based on substantially related professional misconduct.

Further, AB 2138 amended BPC section 481 to include more specific criteria that bureaus must use to determine whether a crime is substantially related to the qualifications, functions, or duties of the profession.

The Bureau's current substantial relationship criteria, as well as its criteria for determining rehabilitation when considering denying, suspending, or revoking a license, are already in section 5017 of the Bureau's regulations (see 16 CCR 5017). This section needs to be amended to meet the requirements of AB 2138, as well as any other sections set forth in this Notice. In addition, necessary technical amendments are included in these regulations to ensure consistency with the statute.

The proposed regulations implement new requirements imposed by AB 2138 to the Bureau's license application process. The Bureau has determined that amending the regulations is required to ensure compliance with the statutory changes.

Incorporated by Reference

There are no documents incorporated by reference.

Anticipated Benefit of the Proposed Regulations:

AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. These proposed amendments further that goal by adopting criteria that emphasize an applicant's or licensee's rehabilitative efforts and what is needed to make a showing of rehabilitation.

The proposed regulations will amend the Bureau's license application process to comply with changes to the BPC. The proposed amendments will also place applicants and licensees on notice that the Bureau is statutorily authorized to deny, suspend, or revoke a license because of professional misconduct and discipline taken by another licensing board, bureau, or jurisdiction. The proposal also makes relevant parties (e.g., Deputy Attorneys General, Administrative Law Judges, respondents, and respondents' legal counsel) aware that, when considering denial or discipline of applicants or licensees, the Bureau uses the listed criteria to determine whether the crime, act, or professional misconduct is substantially related to the California cannabis industry.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

After conducting an evaluation, the Bureau has determined that the Bureau's regulations are the only regulations concerning the application requirements for commercial cannabis licenses issued by the Bureau. Therefore, the Bureau has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations.

Evaluation of Inconsistency/Incompatibility with Existing Federal Regulations:

There are currently no federal regulations regarding the licensing process for commercial cannabis businesses within California.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Bureau has made the following initial determinations:

Mandate on local agencies and school district: 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.

Cost impacts on a 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.

Significant effect on housing costs: None.

Small Business Determination: The Bureau has determined that the proposed regulations will have no effect on small businesses. A significant number of Bureau licensees are small businesses. The proposed regulations result in minor changes to the Bureau's license application process. However, the proposed regulations are

unlikely to affect the determination of which applicants qualify for a license from the Bureau.

Significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states:

The proposed regulation will not have a significant adverse economic impact on businesses or individuals 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 become owners of a license.

Results of the 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.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Bureau must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Kaila Fayne
Bureau of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-465-9025
BCC.comments@dca.ca.gov

The backup contact person for these inquiries is:

Paul Atienza
Bureau of Cannabis Control
2920 Kilgore Road
Rancho Cordova, CA 95670
916-465-9029
Paul.Atienza@dca.ca.gov

Please direct requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to the contact persons listed above.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Bureau will have the entire rulemaking file available for inspection and copying, throughout the rulemaking process, at its office at the address above. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the Initial Statement of Reasons. Copies of materials may be obtained by contacting Kaila Fayne at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Bureau may adopt the proposed regulations substantially as described in this notice. If the Bureau makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Bureau adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Kaila Fayne at the address or phone number indicated above.

The Bureau will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Kaila Fayne at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement or Reasons, and the text of the regulations can be accessed through the Bureau's website at:
https://bcc.ca.gov/law_regs/cannabis_regs.html.