

Notice of Proposed Action

Title 10: Bureau of Real Estate Appraisers

NOTICE IS HEREBY GIVEN that the Bureau of Real Estate Appraisers (“Bureau” or “BREA”) is proposing to take the action described in the informative digest below.

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 prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

COMMENT PERIOD

Written comments including those sent by mail or email to the address listed under “Contact Person” in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on March 17, 2020.

AVAILABILITY OF MODIFICATIONS

The Bureau, upon its own motion or at the instance 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 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 comment related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Authority vested by Sections 481, 482, 493, 11313, and 11314 of the Business and Professions Code to implement, interpret and make specific sections 141, 480, 481, 482, 488, 490, 493, and 11340 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018) amended the Business and Professions Code related to the substantial relationship determination and the criteria of rehabilitation. These amendments require the Bureau to amend its regulations to consider certain issues when evaluating whether there is a substantial relationship between a crime or act and being an appraiser and whether the individual has been rehabilitated. The Bureau proposes to amend sections 3722 and 3723 to comply with the directive in AB 2138.

Section 3722: Substantial Relationship Criteria

The proposed regulation would change the substantial relationship criteria to allow denial, suspension, or revocation of a license for commission of a crime, professional misconduct, or an act if it is substantially related to the qualifications, functions or duties of a licensee. To determine if whether a crime, professional misconduct, or an act is substantially related to the qualifications, functions or duties of a licensee, the Bureau would evaluate if to a substantial degree the crime, professional misconduct, or act evidences present or potential unfitness to hold such a license to perform the functions authorized by the license in a manner consistent with the public health, safety or welfare. The amendments would also establish criteria for the Bureau to consider when making the substantial relationship determination for a crime.

The regulation already lists when a crime or act shall be deemed substantially related to the qualifications, functions or duties of a licensed appraiser. The proposal would add professional misconduct to crimes and acts to be consistent with earlier subsections. The Bureau does not propose amending the actions that are deemed to be substantially related to the qualifications, functions or duties of a licensee.

Section 3723: Criteria of Rehabilitation

The proposed regulation would require the Bureau, when considering denying an applicant who completed the criminal sentence at issue without a violation of probation or parole, to determine whether the applicant made a showing of rehabilitation and is presently eligible for a license. In making that determination, the proposed regulation would require the Bureau to consider the nature and gravity of the crime, the length of the parole or probation period, the extent to which the parole or probation period was shortened or lengthened; and the reasons therefor, the terms or conditions of parole or probation and the extent to which they bear on the applicant's rehabilitation, and the extent to which the terms or conditions of parole were modified; and why. When considering denying a license for something other than a completed criminal sentence under Section 480 of the Business and Professions Code or if the Bureau determines the applicant is not rehabilitated pursuant to the criteria above, the Bureau would consider the following criteria: the nature and gravity of the act or crime, evidence of any act or crime committed subsequent to the act under consideration, the number of years that have elapsed since the act or crime, whether the applicant complied with lawful sanctions, all evidence of rehabilitation submitted by the applicant, and the criteria stated above. When the Bureau is considering suspending or revoking a license, the Bureau will consider similar criteria.

ANTICIPATED BENEFITS

As specified in the legislative analyses of AB 2138, this proposal seeks to reduce barriers to licensure for individuals with prior criminal convictions, which may reduce recidivism and provide economic opportunity to California's residents. In addition, the proposal seeks to improve clarity, transparency, and consistency for applicants and licensees in the Bureau's use of

their criminal histories. Further, by reducing barriers to licensure, the Bureau anticipates benefits to consumers who may have greater access to licensees.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations, the Bureau has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to, or mandate imposed on, any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None

Business Impact: The Bureau has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This is based upon the fact that the proposed amendments are limited to determining whether individuals qualify for a license and whether they have been rehabilitated. These changes will affect few individuals and will likely not result in a significant shift in more or less licensees for businesses to hire.

Cost Impact on Representative Private Person or Business: The Bureau does not anticipate any cost impact as the amendments will not require more from private persons or businesses. As a result 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.

Effect on Housing Costs: None

Effect on Small Businesses: The proposed regulations will not impact small businesses because the proposed amendments will affect few individuals and will likely not result in a significant shift in more or less licensees for businesses to hire.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Impact on Jobs/Businesses: The Bureau has determined this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing

businesses or the expansion of business in the State of California. This is because the proposed amendments will likely not result in a significant shift in more or less licensees.

Benefits of Regulation: The Bureau has determined that this proposal may benefit individuals, who would have greater access to licensure, reduce criminal recidivism, and provide economic opportunity to California residents with a criminal history. The proposal also improves clarity, transparency, and consistency for applicants and licensees when determining substantial relationship. The public may benefit from the proposal with increased access to licensed professionals. Businesses may benefit as they would have a larger pool of licensed professionals from which to hire. The regulatory proposal does not affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the action is proposed, 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 and equally effective in implementing the statutory policy or other provision of law.

The Bureau rejected the following alternative. Do nothing, meaning the Bureau would not adopt the regulations. The Bureau opted not to pursue this option because per AB 2138, the Bureau is mandated to adopt proposed regulations by July 1, 2020.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

The proposed text, this notice, the statement of reasons, and any other relevant documents are on the Bureau's website at www.brea.ca.gov. Click the "Laws & Enforcement" tab at the top of the page. Under the heading "Rulemaking Notifications" find the documents associated with this rulemaking subject: "Substantial Relationship and Rehabilitation Criteria."

AVAILABILITY AND LOCATON OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. As of the date this notice is published in the Notice of Register, the rulemaking file consists of

this notice, the proposed text of the regulation and the initial statement of reasons. Copies may be obtained by contacting person named below or by accessing the website as provided above.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its competition, copies of the Final Statement of Reasons may be obtained by contacting the person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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