

BUREAU OF HOUSEHOLD GOODS AND SERVICES
Electronic and Appliance Repair Dealer Registrations

FINAL STATEMENT OF REASONS

Hearing Date: None Requested; None Held.

Subject Matter of Proposed Regulations: Criminal Conviction Substantial Relationship and Rehabilitation Criteria

Sections Affected: California Code of Regulations (CCR), Title 16, Division 27, Article 7, Sections 2767 and 2768.

Request for Early Effective Date

As the provisions of AB 2138 go into effect July 1, 2020, the Bureau of Household Goods and Services (Bureau) requests an effective date of July 1, 2020 (or effective upon filing if approval is after July 1) to coincide with statute.

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein is updated as follows:

The initial comment period for this rulemaking was from February 21, 2020 to April 6, 2020, during which no comments were received by the Bureau.

The Bureau modified the proposed regulatory text as follows:

1. CCR, title 16, section 2767:
 - a. Subsection (a): Added a space between “section 141,” and “Division”. Added reference to Business and Professions Code (BPC) section 9841, subdivision (a)(7), which authorizes the Bureau to deny, revoke, suspend or place on probation the registration of a service dealer for conviction of the dealer or any employee, partner, officer, or member of the dealer of a crime that has a substantial relationship to the qualifications, functions and duties of a registrant.

Added reference to BPC section 9853, subdivision (a), which states that a plea or verdict of guilty or a conviction following a plea of *nolo contendere* is considered a ‘conviction’, and also states the procedural timeframe for

basing adverse action against a registrant upon conviction evidence. Added reference to BPC section 9855.7, subdivision (b), which allows for the Bureau to deny, suspend, revoke, or place on probation the registration of a service contractor for any act, omission, or crime committed by the service contractor or any employee, partner, officer, or agent of the service contractor for conviction of a crime that has a substantial relationship to the qualifications, functions and duties of a registrant.

These additions ensure section 2767 completely enumerates the BPC sections in the relevant practice act that relate to the concept of substantial relationship.

- b. Subsection (b): Inserted “all of” before “the following criteria” to reflect the statutory requirement in Business and Professions Code (BPC) section 481, subdivision (b).
 - c. Subsection (b)(1) through (3): Made technical punctuation corrections.
 - d. Authority and Reference: Made minor revisions to delete inapplicable authority sections and added statutes relevant to substantial relationship criteria.
2. CCR, title 16, section 2768:
- a. Subsection (a): Made technical revisions. Revised the phrase “the applicant was convicted of a crime” to instead read “the applicant has been convicted of a crime” to conform the proposed regulation to the language used in BPC section 480, subdivision (a), as added by AB 2138. Struck “and is presently eligible for a license” because the meaning of the term “presently” was unclear to the regulated public and the phrase was determined to be unnecessary given the other clarifying modifications to the proposal.
 - b. Subsection (b): Removed and restated the subsection language to clarify this subsection sets forth the rehabilitation criteria the Bureau will apply to applicants with a criminal conviction who have not completed the criminal sentence without a violation of parole or probation, applicants with a criminal conviction who did not make a showing of rehabilitation under subsection (a), proceedings in which the disciplinary action is based on professional misconduct (as that term is used under new BPC section 480), proceedings based on a disciplinary action as described in BPC

section 141, and proceedings based on BPC sections 9841, 9854, or 9855.7. Also, amended “board” to read as “Bureau” to correct the reference made in error in the modified text.

BPC section 9841 allows for the Bureau to deny, suspend, revoke, or place on probation the registration of a service dealer for acts or omissions by the dealer, their employees, partners, officers, or members for enumerated reasons.

BPC section 9853 states that a plea or verdict of guilty or a conviction following a plea of nolo contendere is considered a ‘conviction’, and also states the procedural timeframe for basing adverse action against a registrant upon conviction evidence.

BPC section 9855.7 allows for the Bureau to deny, suspend, revoke, or place on probation the registration of a service contractor for any act, omission, or crime committed by the service contractor or any employee, partner, officer, or agent of the service contractor for conviction of a crime that has a substantial relationship to the qualifications, functions and duties of a registrant.

These clarifications are necessary to inform the public, applicants, and Bureau staff that rehabilitation criteria will be considered for all matters, regardless of whether the grounds for stem from BPC section 480. The clarifications promote equity and fairness by ensuring all applicants will have the ability to submit rehabilitation evidence to the Bureau for its consideration, which is in keeping with the legislative intent of AB 2138. The clarifications also provide consistency with other DCA board regulations.

- c. Subsection (b)(1) through (3): Added “professional misconduct” for consistent use with the term in CCR section 2767 and to differentiate “professional misconduct” as a ground provided under new BPC section 480, subsection (a)(2), from other “acts.” Added “disciplinary action(s)” for consistent use with the term in CCR section 2768(b) and BPC section 141 and to differentiate “disciplinary actions” as a ground for revocation or suspension provided under BPC section 141 from other “acts.”
- d. Subsection (b)(2): Replaced the word “including” with the word “and.” As written with the word “including,” this subsection could have been interpreted as meaning that the listed evidence could only be considered if the evidence was part of “the total criminal record,” despite the language

of the subsection describing non-criminal acts. To prevent this possibility, the word “and” has been added to clearly indicate that the type of evidence described in subsection (b)(2) includes both “the total criminal record” in addition to the other listed evidence types.

- e. Subsection (b)(5): Replaced the phrase “subsections (a)(1)-(a)(5)” with “subsections (a)(1) through (a)(5)” to more clearly articulate that the phrase refers to a series of subsections, all of which are applicable. Changing a hyphen to the word “through” shows the list is inclusive.
- f. Authority and Reference: Made minor revisions to delete inapplicable authority sections and added statutes relevant to substantial relationship criteria.

On April 16, 2020, the Bureau issued a 15-day notice of availability of modified text, and the comment period closed on May 1, 2020. No comments were received by the Bureau.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The proposed regulations may affect small businesses, who would otherwise not qualify for a permit, however, the Bureau is unaware of the number of potential small businesses that would be impacted by this regulatory proposal.

Economic Impact Assessment:

The Bureau currently registers approximately 9,000 electronic repair service dealers and appliance repair service dealers and 12,000 service contractors. Registrants may be a sole proprietor, partnership, corporation, or limited liability corporation.

The Bureau receives approximately 1,700 initial license applications (780 Contract Seller, 400 Electronic Repair, and 520 Major Appliance) per year and historically denies a minimal number (range – 0 to 8) of initial license applications per year.

The Bureau notes, while AB 2138 is intended to reduce barriers to initial licensure, it does not anticipate a significant increase (range – 0 to 3) of initial license applications approved per year and be required to pay the initial license fee ranging from \$95 to \$190 as follows:

Registration and License Type	Applicants Per Year	Fee Costs Per Year
Registration Fee - Service Contract Seller	1	\$95
Registration Fee - Electronic Repair	1	\$190
Registration Fee - Major Appliance	1	\$190
Total Costs:		\$475

Licensees will also be required to pay ongoing annual renewal fees as follows:

Registration and License Type	Applicants Per Year	Fee Costs Per Year
Annual Renewal - Service Contract Seller	1	\$95
Annual Renewal - Electronic Repair	1	\$190
Annual Renewal - Major Appliance	1	\$190
Total Costs:		\$475

The total economic impact is estimated to be up to approximately \$475 to \$4,750 per year and up to \$26,125 over a ten-year period as follows:

AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year													
Registration and License Type	Applicants Per Year	Fee Costs Per Year	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Registration Fee - Service Contract Seller	1	\$95	\$95	\$95	\$95	\$95	\$95	\$95	\$95	\$95	\$95	\$95	\$950
Annual Renewal - Service Contract Seller	Various	\$95	\$ -	\$95	\$190	\$285	\$380	\$475	\$570	\$665	\$760	\$855	\$4,275
Registration Fee - Electronic Repair	1	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$1,900
Annual Renewal - Electronic Repair	Various	\$190	\$ -	\$190	\$380	\$570	\$760	\$950	\$1,140	\$1,330	\$1,520	\$1,710	\$8,550
Registration Fee - Major Appliance	1	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$190	\$1,900
Annual Renewal - Major Appliance	Various	\$190	\$ -	\$190	\$380	\$570	\$760	\$950	\$1,140	\$1,330	\$1,520	\$1,710	\$8,550
Total Costs:			\$475	\$950	\$1,425	\$1,900	\$2,375	\$2,850	\$3,325	\$3,800	\$4,275	\$4,750	\$26,125

Fiscal Impact:

The Bureau anticipates a minimal number (range – 0 to 3) additional applicants will be provided licensure per year as a result of the proposed regulations. The Bureau indicates a Program Technician II will perform any licensing workload. Initial registration is anticipated to take approximately 30 minutes per application at a cost of \$38 per

application and renewal registration approximately 15 minutes at a cost of approximately \$99 per application (licensing - \$19 plus enforcement-related - \$80).

Initial registration and renewal workload are estimated as follows:

AB 2138 Impact - Estimates Number of Additional Registrants and Licensees Per Year												
Registration and License Type	Applicants Per Year	Years Ongoing										
Service Contract Seller/Electronic Repair/Major Appliance		1	2	3	4	5	6	7	8	9	10	Total
Initial Registration	3	3	3	3	3	3	3	3	3	3	3	30
Licensing Workload (30 minutes) - Program Technician II*		\$114	\$114	\$114	\$114	\$114	\$114	\$114	\$114	\$114	\$114	\$1,140
Total Initial Costs:		\$114	\$114	\$114	\$114	\$114	\$114	\$114	\$114	\$114	\$114	\$1,140
License Renewal		-	3	6	9	12	15	18	21	24	27	135
Licensing Workload (15 minutes) - Program Technician II*	Various	-	\$57	\$114	\$171	\$228	\$285	\$342	\$399	\$456	\$513	\$2,565
Enforcement-related costs per licensee	\$80	-	\$240	\$480	\$720	\$960	\$1,200	\$1,440	\$1,680	\$1,920	\$2,160	\$10,800
Total Renewal Costs:		-	\$297	\$594	\$891	\$1,188	\$1,485	\$1,782	\$2,079	\$2,376	\$2,673	\$13,365
Total Initial and Renewal Costs:		\$114	\$411	\$708	\$1,005	\$1,302	\$1,599	\$1,896	\$2,193	\$2,490	\$2,787	\$14,505

*Program Technician II (approximately \$76 per hour - includes DCA distributed costs)

Enforcement Costs (\$1,680,100)/Licensee Population (21,000) = \$80 per licensee

Any workload and costs to process the initial and renewal applications will likely be absorbed within existing resources.

The Bureau estimates annually initial and renewal license fee revenues ranging from \$475 to \$4,750 per year and up to \$26,125 over a ten-year period as a result of the proposed regulations.

Anticipated Benefits of this Proposal

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 public may benefit from the proposal with increased access to licensed professionals, which may benefit the health and welfare of California's consumers. Electronic and Appliance Repair 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.

Alternatives Determination

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the regulation is proposed or would be as effective or less burdensome to affected private persons than the proposed regulation, or 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 that were considered and the reason the alternative was rejected or adopted:

- Option 1: To pursue a regulatory change that requires the Bureau to find rehabilitation if the applicant or registrant completed the terms of their criminal probation or parole. Courts give little weight to the fact that an applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole since they are under the direct supervision of correctional authorities and are required to behave in an exemplary fashion. As such, the Bureau believes that reviewing each individual on the basis of multiple criteria is the better indicator whether individuals are rehabilitated and not a danger to the public's health, safety, and welfare. For these reasons, the Bureau rejected this option.
- Option 2: 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.

Objections or Recommendations/Responses

There were no objections or recommendations regarding the proposed action.

Summary of Comments Received During the 45-day Comment Period

The proposed text was made available to the public for comment from February 21, 2020 to April 6, 2020. No public comments were received during this comment period.

Summary of Comments Received During the 15-day Comment Period

The proposed text was made available to the public for comment from April 16, 2020 to May 1, 2020. No public comments were received during this comment period.

Nonduplication Statement - 1 CCR § 12

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as "authority" and "reference" for the proposed regulations and the duplication or overlap is necessary to satisfy the "clarity" standard of Government Code section 11349.1, subdivision (a)(3).