



August 28, 2018

Honorable Members of the California State Senate
Honorable Members off the California State Assembly
State Capitol
Sacramento, CA 95814

Re: AB 2138 (Chiu and Low) -- **OPPOSE**

Dear Senators and Assemblymembers:

The Center for Public Interest Law (CPIL) at the University of San Diego School of Law respectfully opposes AB 2138 (Chiu and Low), which was substantially amended just on August 24, 2018, for the following reasons:

- The bill would require a license to be issued to applicants ranging from former physicians to former CPAs to former engineers *who may still be on parole for their felony convictions*.¹
- For the vast majority of licensed professions—including professions such as medicine where dishonesty can be fatal—the bill does not consider “serious felonies” to include felony-level convictions “involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.”²

¹ Consider a hypothetical ten-year sentence for a former physician who was convicted of multi-million dollar Medical fraud. Assume the physician is released from prison after one year and placed on parole under the constant and watchful eye of a probation officer for the remaining nine years of her sentence, where the slightest slip up could result in a return to prison. Seven years pass while the physician is on parole. After the seventh year, but with still two years to serve on their sentence and while for two years under the supervision of a probation officer, the Medical Board would be required to issue the former physician a license. Legally assuming someone who is under the watchful eye of probation is as genuinely rehabilitated as someone who is living without such supervision is, respectfully, an unwarranted equation. CPIL had for this reason requested the bill be amended to refer to seven years having elapsed since “the entirety of his or her *sentence* for the conviction” but that amendment was not accepted.

² CPIL had requested an amendment including some of the crimes described in Business & Professions Code section 475 be included as “serious felonies” if in fact the conviction was for a felony. The amendment request was to add the following language: “... the preceding seven-year limitation shall not apply to a conviction for a serious felony, as defined in the Penal Code, or to a conviction for a felony that involved conduct defined in section 475, subdivisions (a)(1), (a)(3), and (a)(4) of the Business and Professions Code.” The referenced provisions of section 475 in part read as follows: “(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of: ... (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.”

- The bill, in a nearly one-size-fits-all fashion, addresses the ways in which over thirty different licensing boards deal with applicants released from prison more than seven years prior to the application for licensure, even though every profession is different. ***From pest control to physicians and surgeons to dentists, they are all treated almost identically when it comes to the seven year period.***³ Yet, for reasons that cannot be explained on policy grounds, the bill treats the licensing agencies overseeing the horse racing industry, the scandal-plagued for-profit college sector, and the boxing and MMA industry differently than all other boards or bureaus.⁴ While these licensing boards can, notwithstanding seven years having elapsed, deny an application based on a conviction involving the broad categories of “dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another,”⁵ the bill does not afford the same breadth of regulatory discretion to boards that license healthcare practitioners, who can permanently injure or kill patients through their dishonesty.

CPIL wholeheartedly supports efforts to lower barriers to licensure for those convicted of crimes. We unreservedly applaud the authors and the sponsors for tackling such an important issue of fairness and social justice. ***Indeed, CPIL wishes they would go farther and address the very real***

³ Implicated by this bill are the Boards or Bureaus of Accountancy, Acupuncture, Architects Board, Barbering and Cosmetology, Behavioral Sciences, Cannabis Control, Cemetery and Funeral, Chiropractic Examiners, Contractors, Court Reporters, Dental, Engineers, Landscape Architects, Medical, Naturopaths, Occupational Therapy, Optometry, Osteopaths, Pharmacy, Physical Therapy, Physician Assistants, Podiatric, Psychology, Registered Nursing, Respiratory Care, Speech Language Pathology and Audiology, Structural Pest Control, Veterinary, Vocational Nursing, and Bureaus.

To preserve some profession-by-profession differentiating discretion, CPIL had suggested that the seven-year re-offending free period be framed as a rebuttable presumption where a board would have to substantiate some applicant-specific rationale for denying a license after seven offense-free years. The suggestion was not accepted. Our suggestion was as follows: “For the crimes identified in section 475 above, establish a rebuttable presumption that boards may deny licenses to applicants who have been convicted of those crimes, but applicants may rebut that presumption if they can demonstrate rehabilitation and a showing that the public will not be at risk should they be granted a license.”

⁴ “(i) This section does not in any way modify or otherwise affect the existing authority of the following entities in regard to licensure:

(1) The State Athletic Commission.
(2) The Bureau for Private Postsecondary Education.
(3) The California Horse Racing Board.”

⁵ “480.2. (a) The Bureau for Private Postsecondary Education, the State Athletic Commission, and the California Horse Racing Board may deny a license regulated by it on the grounds that the applicant has one of the following:

(1) Been convicted of a crime.
(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.
(3) (A) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.”

Honorable Members of the California State Senate
Honorable Members off the California State Assembly
August 28, 2018
3

social justice issues addressed by this bill by proposing to eliminate or reduce the requirements of licensure for some professions entirely, as urged by no less than the Obama Administration.⁶

However, this bill is, respectfully, still substantially flawed. When these flaws are mixed with the absence of urgency for enacting the bill immediately, it is with regret that CPIL requests that you vote no on AB 2138 (Chiu and Low).

Sincerely,

A handwritten signature in black ink that reads "Bridget Fogarty Gramme". The signature is written in a cursive, flowing style.

Bridget Fogarty Gramme
Administrative Director
Center for Public Interest Law
University of San Diego School of Law

⁶ <https://obamawhitehouse.archives.gov/the-press-office/2016/06/17/fact-sheet-new-steps-reduce-unnecessary-occupation-licenses-are-limiting>.