

TITLE 16. STRUCTURAL PEST CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Structural Pest Control Board (SPCB) is proposing to take action as described in the Informative Digest.

PUBLIC HEARING

The SPCB has not scheduled a public hearing for this action however, the SPCB 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 and addressed to the individuals listed under "Contact Person" in this Notice.

COMMENT PERIOD

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under "Contact Person" in this Notice, must be received by the SPCB at its office no later than Monday, April 6, 2020, or must be received by the SPCB at the hearing, should one be held. Both oral and written comments may also be made at the hearing, if one is held.

AVAILABILITY OF MODIFICATIONS

The SPCB, upon its own motion or at the insistence 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 the 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.

AUTHORITY AND REFERENCE

Pursuant to the authority granted by Business and Professions Code (BPC) sections 481, 482, 493, and 8525 and to implement, interpret and make specific BPC sections 114.5, 115.5, 141, 475, 480, 481, 482, 488, 490, 492, 493, 8560-8566, 8610, 8568, 8620, 8646, and 8674 and Health and Safety Code sections 11361.5 and 11361.7 the Structural Pest Control Board (SPCB) is proposing to amend California Code of Regulations (CCR), Title 16, sections 1936, 1936.1, 1936.2, 1937.1. and 1937.2.

INFORMATIVE DIGEST

BPC section 8525 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable it to carry into effect the provisions of the Structural Pest Control Act (Act). Additionally, as required under Assembly Bill (AB) 2138 (Chiu, Chapter 995, Statutes of 2018), the primary purpose of this proposal is to implement, interpret, and make

specific the provisions of BPC sections 141, 475, 480, 481, 482, 488, 490, 492, and 493 relative to substantial relationship and rehabilitation criteria. The SPCB is proposing the following changes:

Amend CCR, Title 16, Section 1937.1 (Substantial Relationship Criteria):

The proposed regulation, for purposes of denial, suspension, or revocation of a license, would add professional misconduct as grounds requiring the SPCB to consider the substantially related criteria, and require the Board, in making the substantial relationship determination for a crime, to consider the following criteria: (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 a person holding the license. The proposal would also add that substantially related crimes, professional misconduct, or acts would include violating other state or federal laws governing the practice of veterinary medicine.

Amend CCR, Title 16, Section 1937.2 (Criteria for Rehabilitation):

The proposed regulation would clarify that the SPCB, when considering a license denial or discipline on the ground that the applicant or licensee was convicted of a crime, would have to determine whether the applicant or licensee made a showing of rehabilitation and is presently eligible for a license, if the applicant or licensee completed the criminal sentence without a violation of parole or probation. In making that determination, the proposal would require the SPCB 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 or licensee's rehabilitation, and the extent to which the terms or conditions of parole were modified, and why. The proposal would require a broader set of rehabilitation criteria to be considered for applicants and licensees who had not completed the criminal sentence without a violation of parole or probation, did not sufficiently demonstrate their rehabilitation under the narrower set of criteria, or when the denial or discipline was based on something other than a conviction

Amend CCR, Title 16, Section 1936, 1936.1, 1936.2 (Licensing Applications):

Currently, SPCB's Company Registration, Operator, Field Representative, and Applicator license applications inquire as to the applicant's criminal history and the status of any pending criminal action the applicant may be facing.

This regulatory proposal will amend CCR section 1936 and Forms 43L-1 (Rev. 7/20) (Operator License Application) and 43L-14 (Rev. 7/20) (Field Representative License Application) which are incorporated by reference, 1936.1 and Form 43L-26 (Rev. 7/20) (Company Registration Application) which is incorporated by reference, and 1936.2 and Form 43L-21 (Rev. 7/20) (Applicator Application) which is incorporated by reference, to eliminate the questions inquiring about an applicant's criminal history or the status of any pending criminal action the applicant may be facing.

POLICY STATEMENT OVERVIEW / 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 SPCB's use of their criminal histories. Further, by reducing barriers to licensure, the SPCB anticipates benefits to consumers who may have greater access to licensed professionals.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the SPCB has conducted a search of any similar regulations of these topics 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: The SPCB anticipates that there may be an increased cost of the state as a result of amending and adopting the sections identified in the regulatory proposal. By further defining the substantial relationship and rehabilitation criteria for criminal convictions, SPCB staff may see an increased workload to research convictions and to substantiate that rehabilitation has been achieved.

Cost or Savings in Federal Funding to the State: None

Nondiscretionary Costs / Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

BUSINESS IMPACT

The SPCB has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The SPCB has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The SPCB estimates that there will be no increased costs for businesses or individuals to comply with the proposed regulations, as there would be fewer restrictions for individuals with criminal convictions to obtain licensure.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The proposed regulations may affect small businesses, who would have a greater pool of licensed professionals from which to hire. The SPCB registers approximately 3,149 companies but does not have data identifying what percentage of those are small businesses.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Impact on Jobs / Businesses: The SPCB has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

Benefits of the Proposed Regulation

The SPCB 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 residents. Structural pest control 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 SPCB must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention 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 proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The following alternatives were considered:

Option 1: To pursue a regulatory change that requires the SPCB to find rehabilitation if the applicant completed their 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 SPCB 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 SPCB rejected this option.

Option 2: Do nothing, meaning the SPCB would not adopt the regulations. The SPCB opted not to pursue this option because per AB 2138, the SPCB is mandated to adopt proposed regulations by July 1, 2020.

Any interested person may submit comments to the SPCB in writing relevant to the above determinations at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SPCB 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

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the SPCB at 2005 Evergreen Street, Suite 1500, Sacramento, CA 95815.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS 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.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Contact Person named below or by accessing the website listed below.

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BACKUP CONTACT PERSON

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WEBSITE ACCESS

Materials regarding this proposal can be found at www.pestboard.ca.gov