

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2396

Introduced by Assembly Member Bonta

February 21, 2014

An act to amend Section ~~1203.41~~ of the Penal Code 480 of the *Business and Professions Code*, relating to expungement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2396, as amended, Bonta. Convictions: ~~expungement.~~
expungement: licenses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to deny, suspend, or revoke a license on various grounds, including, but not limited to, conviction of a crime if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law prohibits a board from denying a license on the ground that the applicant has committed a crime if the applicant shows that he or she obtained a certificate of rehabilitation in the case of a felony, or that he or she has met all applicable requirements of the criteria of rehabilitation developed by the board, as specified, in the case of a misdemeanor.

Existing law permits a defendant to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty in any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or has been convicted of a misdemeanor and not granted probation and has fully complied with and performed the

sentence of the court, or has been sentenced to a county jail for a felony, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted this or other specified relief and requires the defendant to be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

This bill would prohibit a board from denying a license based solely on a conviction that has been dismissed pursuant to the above provisions.

~~Existing law authorizes a court to allow a defendant sentenced to a county jail for a felony to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty after the lapse of one or 2 years following the defendant’s completion of the sentence, as specified, provided that the defendant is not under supervision, as specified, and is not serving a sentence for, on probation for, or charged with the commission of any offense. Existing law releases the defendant from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as specified.~~

~~This bill would make a technical, nonsubstantive change to these provisions:~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 480 of the Business and Professions Code
2 is amended to read:
3 480. (a) A board may deny a license regulated by this code
4 on the grounds that the applicant has one of the following:
5 (1) Been convicted of a crime. A conviction within the meaning
6 of this section means a plea or verdict of guilty or a conviction
7 following a plea of nolo contendere. Any action that a board is
8 permitted to take following the establishment of a conviction may
9 be taken when the time for appeal has elapsed, or the judgment of
10 conviction has been affirmed on appeal, or when an order granting
11 probation is made suspending the imposition of sentence,
12 irrespective of a subsequent order under the provisions of Section
13 1203.4, 1203.4a, or 1203.41 of the Penal Code.

1 (2) Done any act involving dishonesty, fraud, or deceit with the
2 intent to substantially benefit himself or herself or another, or
3 substantially injure another.

4 (3) (A) Done any act that if done by a licentiate of the business
5 or profession in question, would be grounds for suspension or
6 revocation of license.

7 (B) The board may deny a license pursuant to this subdivision
8 only if the crime or act is substantially related to the qualifications,
9 functions, or duties of the business or profession for which
10 application is made.

11 (b) Notwithstanding any other provision of this code, ~~no person~~
12 ~~shall~~ *a person shall not* be denied a license solely on the basis that
13 he or she has been convicted of a felony if he or she has obtained
14 a certificate of rehabilitation under Chapter 3.5 (commencing with
15 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he
16 or she has been convicted of a misdemeanor if he or she has met
17 all applicable requirements of the criteria of rehabilitation
18 developed by the board to evaluate the rehabilitation of a person
19 when considering the denial of a license under subdivision (a) of
20 Section 482.

21 (c) *Notwithstanding any other provisions of this code, a person*
22 *shall not be denied a license solely on the basis of a conviction*
23 *that has been dismissed pursuant to Section 1203.4, 1203.4a, or*
24 *1203.41.*

25 (e)

26 (d) A board may deny a license regulated by this code on the
27 ground that the applicant knowingly made a false statement of fact
28 required to be revealed in the application for the license.

29 SECTION 1. ~~Section 1203.41 of the Penal Code is amended~~
30 ~~to read:~~

31 ~~1203.41. (a) If a defendant is sentenced pursuant to paragraph~~
32 ~~(5) of subdivision (h) of Section 1170, the court, in its discretion~~
33 ~~and in the interests of justice, may order the following relief,~~
34 ~~subject to the conditions of subdivision (b):~~

35 ~~(1) The court may permit the defendant to withdraw his or her~~
36 ~~plea of guilty or plea of nolo contendere and enter a plea of not~~
37 ~~guilty, or, if he or she has been convicted after a plea of not guilty,~~
38 ~~the court shall set aside the verdict of guilty, and, in either case,~~
39 ~~the court shall thereupon dismiss the accusations or information~~
40 ~~against the defendant and he or she shall thereafter be released~~

1 from all penalties and disabilities resulting from the offense of
2 which he or she has been convicted, except as provided in Section
3 13555 of the Vehicle Code.

4 (2) The relief available under this section may be granted only
5 after the lapse of one year following the defendant's completion
6 of the sentence, if the sentence was imposed pursuant to
7 subparagraph (B) of paragraph (5) of subdivision (h) of Section
8 1170, or after the lapse of two years following the defendant's
9 completion of the sentence, if the sentence was imposed pursuant
10 to subparagraph (A) of paragraph (5) of subdivision (h) of Section
11 1170.

12 (3) The relief available under this section may be granted only
13 if the defendant is not under supervision pursuant to subparagraph
14 (B) of paragraph (5) of subdivision (h) of Section 1170, and is not
15 serving a sentence for, on probation for, or charged with the
16 commission of any offense.

17 (4) The defendant shall be informed, either orally or in writing,
18 of the provisions of this section and of his or her right, if any, to
19 petition for a certificate of rehabilitation and pardon at the time he
20 or she is sentenced.

21 (5) The defendant may make the application and change of plea
22 in person or by attorney, or by a probation officer authorized in
23 writing.

24 (b) Relief granted pursuant to subdivision (a) is subject to the
25 following conditions:

26 (1) In a subsequent prosecution of the defendant for any other
27 offense, the prior conviction may be pleaded and proved and shall
28 have the same effect as if the accusation or information had not
29 been dismissed.

30 (2) The order shall state, and the defendant shall be informed,
31 that the order does not relieve him or her of the obligation to
32 disclose the conviction in response to any direct question contained
33 in any questionnaire or application for public office, for licensure
34 by any state or local agency, or for contracting with the California
35 State Lottery Commission.

36 (3) Dismissal of an accusation or information pursuant to this
37 section does not permit a person to own, possess, or have in his or
38 her custody or control any firearm or prevent his or her conviction
39 under Chapter 2 (commencing with Section 29800) of Division 9
40 of Title 4 of Part 6.

1 ~~(4) Dismissal of an accusation or information underlying a~~
2 ~~conviction pursuant to this section does not permit a person~~
3 ~~prohibited from holding public office as a result of that conviction~~
4 ~~to hold public office.~~

5 ~~(e) This section applies to any conviction specified in~~
6 ~~subdivision (a) that occurred before, on, or after January 1, 2014.~~

7 ~~(d) A person who petitions for a change of plea or setting aside~~
8 ~~of a verdict under this section may be required to reimburse the~~
9 ~~court for the actual costs of services rendered, whether or not the~~
10 ~~petition is granted and the records are sealed or expunged, at a rate~~
11 ~~to be determined by the court not to exceed one hundred fifty~~
12 ~~dollars (\$150), and to reimburse the county for the actual costs of~~
13 ~~services rendered, whether or not the petition is granted and the~~
14 ~~records are sealed or expunged, at a rate to be determined by the~~
15 ~~county board of supervisors not to exceed one hundred fifty dollars~~
16 ~~(\$150), and to reimburse any city for the actual costs of services~~
17 ~~rendered, whether or not the petition is granted and the records are~~
18 ~~sealed or expunged, at a rate to be determined by the city council~~
19 ~~not to exceed one hundred fifty dollars (\$150). Ability to make~~
20 ~~this reimbursement shall be determined by the court using the~~
21 ~~standards set forth in paragraph (2) of subdivision (g) of Section~~
22 ~~987.8 and shall not be a prerequisite to a person's eligibility under~~
23 ~~this section. The court may order reimbursement in any case in~~
24 ~~which the petitioner appears to have the ability to pay, without~~
25 ~~undue hardship, all or any portion of the costs for services~~
26 ~~established pursuant to this subdivision.~~

27 ~~(e) (1) Relief shall not be granted under this section unless the~~
28 ~~prosecuting attorney has been given 15 days' notice of the petition~~
29 ~~for relief. The probation officer shall notify the prosecuting attorney~~
30 ~~when a petition is filed, pursuant to this section.~~

31 ~~(2) It shall be presumed that the prosecuting attorney has~~
32 ~~received notice if proof of service is filed with the court.~~

33 ~~(f) If, after receiving notice pursuant to subdivision (e), the~~
34 ~~prosecuting attorney fails to appear and object to a petition for~~
35 ~~dismissal, the prosecuting attorney may not move to set aside or~~
36 ~~otherwise appeal the grant of that petition.~~