

STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
CONTRACTORS STATE LICENSE BOARD
INITIAL STATEMENT OF REASONS

Hearing Date: April 28, 2020

Subject Matter of Proposed Regulations: Criteria to Aid in Determining if Crimes or Acts Are Substantially Related to Contracting Business; Criteria to Aid in Determining if Financial Crimes Are Directly and Adversely Related to Fiduciary Qualifications, Functions, or Duties of a Licensee or Registrant for the Purpose of Considering Denials of Applications; Criteria for Rehabilitation; Inquiry into Criminal Convictions; and Criteria to Aid in Determining Earliest Date a Denied Applicant May Reapply for Licensure

Sections Affected: Title 16, Division 8, California Code of Regulations Sections 868, 868.1, 869, 869.5, and 869.9

A. Specific Purpose of Each Adoption, Amendment, or Repeal

Problem Being Addressed

The Contractors State License Board's (CSLB or Board) mission is to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction. CSLB licenses more than 349,000 contractors (active, inactive, and expired but renewable) in 44 different license classifications. Licenses are issued to individuals, corporations, partnerships, limited liability companies, and joint ventures. In addition, CSLB issues registrations to approximately 31,000 home improvement salespersons (active and expired but renewable) who solicit, sell, negotiate, and execute contracts on behalf of home improvement contractors.

CSLB has adopted regulations that set forth its substantial relationship criteria and rehabilitation criteria for crimes or acts considered substantially related to the qualifications, functions, or duties of a contractor licensee; criteria for inquiring into criminal convictions; and criteria for setting the earliest date on which a denied applicant may reapply for licensure (Title 16, California Code of Regulations [16 CCR] sections 868 – 869.9).

Assembly Bill (AB) 2138 (Chapter 995, Statutes of 2018) becomes operative on July 1, 2020. The bill amends the provisions of the Business and Professions Code that

relate to a board's ability to deny a license or registration or to take disciplinary action based on a substantially-related criminal conviction and will add new authority to deny a license based upon a professional misconduct finding by another licensing board.

The revisions to Business and Professions Code sections 480 and 481 that become effective on July 1, 2020, impact how CSLB determines whether a crime or professional misconduct is substantially related to the qualifications, functions, or duties of a contractor or home improvement salesperson, which necessitates revisions to CSLB's regulations at 16 CCR section 868. Similarly, revisions to Business and Professions Code section 482 add new requirements for how CSLB determines whether an applicant, licensee, or registrant has made a showing of rehabilitation after CSLB determines there are grounds for discipline or denial based on a substantially-related crime or professional misconduct, which necessitates revisions to 16 CCR section 869.

Revisions to Business and Professions Code section 480 also create a new category of crime that can be grounds for denial of a license or registration – a felony financial crime that is “directly and adversely related to the fiduciary qualifications, functions, or duties” of the regulated business or profession. To provide adequate notice of the Board's authority to deny a license based on these specified criteria, CSLB intends to adopt a new regulation establishing criteria for determining if a felony financial crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a contractor or home improvement salesperson at 16 CCR section 868.1.

Further amendments to CSLB's regulations are being proposed to address other changes to law enacted by AB 2138. These proposed amendments include the addition of references to “professional misconduct” because this will be considered a new legal basis for denial under Business and Professions Code section 480, effective July 1, 2020. The proposed regulatory changes will also add references to discipline under Business and Professions Code section 141 because substantially-related acts that are the basis for discipline in another jurisdiction may be used to discipline a licensee or registrant under Business and Professions Code section 141.

This proposal generally seeks to update CSLB's current regulations consistent with this recently enacted legislation and to more accurately reflect the Board's authority to consider denials, disciplinary action, and petitions for reinstatement and to process inquiries into the circumstances surrounding a criminal conviction.

Anticipated Benefits from This Regulatory Action

The proposed amendments will place applicants, licensees, and registrants on notice that the Board is statutorily authorized to deny, suspend, or revoke a license or registration based on a criminal conviction, professional misconduct, acts, or omissions that are substantially related to the qualifications, functions, or duties of a licensee or registrant. The proposal will also make relevant parties (e.g., the Deputy Attorneys General, Administrative Law Judges, respondents, and respondents' counsels) aware that, when considering denial or discipline, the Board uses the listed criteria to determine whether a crime, professional misconduct, act, or omission is substantially

related to the qualifications, functions, or duties of a contractor or home improvement salesperson and to determine whether a felony financial crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a contractor or home improvement salesperson.

AB 2138 was enacted to reduce licensing and employment barriers for people who are rehabilitated. These proposed amendments will further that goal by adopting criteria that will emphasize an applicant's, licensee's, or registrant's rehabilitative efforts and what will be needed to make a showing of rehabilitation. This may lead to fewer denials and an increase in the number of licensed contractors and registered home improvement salespersons in the marketplace, thereby allowing California consumers access to more licensed and registered construction professionals.

In addition, these changes will benefit the welfare of California residents who hire contractors by helping ensure that individuals who are licensed as contractors or registered as home improvement salespersons have undergone a criminal background review based on established criteria.

Regulatory action is needed because, without the proposed language, there could be confusion about the criteria CSLB uses for determining: (1) whether a crime, act, or professional misconduct is substantially related to the license or registration at issue; (2) whether a felony financial crime is considered directly or adversely related to the contracting or home improvement salesperson profession; (3) whether the applicant or licensee has made a showing of rehabilitation; or (4) what factors the Registrar considers when setting the earliest reapplication date for a denied applicant.

Factual Basis / Rationale

Business and Professions Code section 7008 authorizes CSLB to adopt rules and regulations in accordance with the Administrative Procedure Act that are reasonably necessary to carry out the provisions of the Contractors State License Law.

At its December 13, 2018, meeting, the Board considered implementation of the provisions of AB 2138, including the need for regulatory changes. At its March 21, 2019, meeting, the Board reviewed and authorized proposed regulatory changes to adopt 16 CCR section 868.1, repeal 16 CCR section 869.5, and amend 16 CCR sections 868, 869, and 869.9.

At its September 24, 2019, meeting, the Board reviewed several minor modifications to the proposed regulatory text and approved a motion to rescind the prior proposed text and to move forward with the newly proposed text in the rulemaking process, as outlined below.

The proposed language incorporates new substantial relationship criteria, as set forth in Business and Professions Code sections 481 and 493, effective July 1, 2020. It also expands the current regulations to include discipline under Business and Professions Code section 141 because substantially-related acts that are the basis for discipline in

another jurisdiction currently may be used to discipline a licensee under this section. In addition, the proposed language adds references to “professional misconduct” because this may be considered a legal basis for denial under Business and Professions Code section 480(a)(2), which will become effective July 1, 2020, pursuant to AB 2138.

This proposal further creates criteria for determining if a felony financial crime is directly and adversely related to the fiduciary qualifications, functions, or duties of the business or profession pursuant to Business and Professions Code section 480(a)(1)(B), which will become effective July 1, 2020. The proposed language will also update the regulations to more accurately reflect the Board’s authority to evaluate rehabilitation evidence for all applicants, licensees, and registrants where the Board is considering denial, discipline, or reinstatement of a contractor license or home improvement salesperson registration and to determine a denied applicant’s earliest reapplication date. It also incorporates changes that would further clarify CSLB’s current authority to deny, suspend, or revoke a license or registration for any act or omission that constitutes cause for disciplinary action in the Contractors State License Law.

Specifically, the regulatory changes are being proposed for the following reasons:

Amend Section 868. – Criteria to Aid in Determining if Crimes or Acts Are Substantially Related to Contracting Business.

Specific Purpose

The existing language of 16 CCR section 868 sets forth the criteria under which a crime is considered to be substantially related to the qualifications, functions, or duties of a licensee. However, the current regulatory language does not address changes to the Board’s authority, enacted by AB 2138, or completely reflect all of the Board’s authority to consider denials or disciplinary actions based upon substantially-related crimes, acts, or professional misconduct. As a result, CSLB is proposing the following specific regulatory actions for 16 CCR section 868 to more accurately reflect the Board’s authority as of July 1, 2020.

Amendments to Section Title to Add “Professional Misconduct,” Remove “Contracting Business,” and Add “Qualifications, Functions, or Duties of a Licensee or Registrant”:

The existing title of this section addresses only crimes and acts substantially related to the “contracting business.” However, effective July 1, 2020, Business and Professions Code section 480(a)(2) will authorize the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for “professional misconduct” under specified conditions. Therefore, to avoid confusion and more accurately reflect CSLB’s authority in this area, the regulatory title is being amended to reflect “professional misconduct” in addition to the other grounds for denial or discipline.

Existing law and the law effective July 1, 2020, at Business and Professions Code sections 480 and 481 refer to crimes that are “substantially related to the qualifications,

functions, or duties of the business or profession” regulated by the Board as grounds for denial of a license. The title of the section is proposed to be updated to more precisely reflect the wording of the authorizing statutes that the Board is implementing.

In addition, while Business and Professions Code section 480 refers to the denial of a “license,” existing law and the law effective July 1, 2020, at Business and Professions Code section 493 define “license” to include “registration.” Since CSLB’s Registrar issues both licenses to contractors and registrations to home improvement salespersons (Bus. & Prof. Code, §§ 7072, 7153.1), the title is being revised to more accurately reflect the types of licenses that CSLB issues that would be affected by this regulation. This will help avoid confusion for staff and the regulated community regarding the scope of the Board’s and Registrar’s authority.

Amendments Throughout the Section:

Changes are being proposed throughout the section for minor grammatical and/or punctuation revisions to existing language to allow for greater comprehension and readability of the regulation, as well as for instances where there are multiple occurrences of the same or similar language that requires revisions, as discussed below.

- Add “registration” and “registrant” where “license” and “licensee” are referenced.

The existing regulatory language refers to only licenses and licensees, but CSLB also registers and denies applications for home improvement salespersons. In addition, Business and Professions Code section 493 defines “license” to include “registration.” Therefore, this proposal would add references to “registrations” and “registrants” to more accurately reflect the Board’s licensing authority and the scope of the regulatory proposal.

- Change “code” to “Code” throughout the section in reference to the Business and Professions Code.

This proposal would capitalize “code” to avoid confusion and be consistent with other regulations and the definition contained in 16 CCR section 810, which states, “Code’, unless otherwise defined, means the Business and Professions Code.” Therefore, the Board is proposing to change “code” to “Code” throughout this section.

- Add “professional misconduct” where crimes and acts are referenced.

Effective July 1, 2020, Business and Professions Code section 480(a)(2) will authorize the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for “professional misconduct” under specified conditions. Therefore, the text in this section should include “professional misconduct,” in addition to the other identified offenses, to provide accurate notice to those affected by the regulation of all of the grounds upon which the Board may deny a license.

Amendments to Existing Introductory Paragraph:

The existing introductory paragraph discusses the circumstances under which a crime or act shall be considered substantially related to the qualifications, functions, or duties of a licensee. In addition to minor grammatical and/or punctuation revisions to existing language to allow for improved readability of the regulation, this proposal would amend the introductory paragraph, as discussed below.

- Add “(a)” in front of the first sentence to make it a designated subsection.

This proposal would create new subsections for better organization and grouping of similar concepts within the regulatory proposal.

- Add “Section 141” and “professional misconduct”

Existing law at Business and Professions Code section 141 authorizes CSLB to discipline a licensee for discipline taken by another state, a federal agency, or another country (“foreign jurisdiction”) for any act “substantially related” to the practice regulated by the California license. In addition, effective July 1, 2020, Business and Professions Code section 480(a)(2) will authorize CSLB to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for “professional misconduct” under specified conditions.

This proposal will add references to Business and Professions Code section 141 (discipline by a foreign jurisdiction) and “professional misconduct” to the Board’s substantial relationship criteria regulation to more accurately reflect the Board’s authority to deny or discipline on these grounds.

The Board’s existing substantial relationship criteria regulation sets forth what crimes or acts the Board believes are logically connected to a contractor’s fitness or competence to practice the profession or to the qualifications, functions, or duties of the contractor’s license. The current standard specifies that a crime or act is considered substantially related “if it evidences present or potential unfitness of an applicant or licensee to perform the functions authorized by the license in a manner consistent with the public health, safety, and welfare.”

In the Board’s experience, this existing standard will be equally relevant when considering crimes or acts committed by a licensee or registrant in a foreign jurisdiction or professional misconduct committed by an applicant before another licensing board. As a result, these proposed changes are necessary to give proper notice to those affected applicants, licensees, and registrants of what standard the Board or Registrar will use when evaluating what professional misconduct or acts the Board considers “substantially related” and that could be a basis for license or registration denial, suspension, or revocation by the Board pursuant to Business and Professions Code sections 141, 480, or 490.

- Delete “as defined in Section 480 of the code”

The new provisions of Business and Professions Code section 480 will relate to only crimes and professional misconduct. The authority for “acts” will be removed from Section 480, effective July 1, 2020. However, provisions relating to acts are contained in Business and Professions Code section 141, which authorizes CSLB to discipline a licensee for discipline taken by another state, a federal agency, or a foreign jurisdiction for any act that is substantially related to the profession regulated by the licensee’s California license. A reference to Business and Professions Code section 141 is being added, as discussed above. Consequently, this language will be removed to more accurately reflect the Board’s legal authority to consider denials, suspensions, or revocations, as set forth in these Business and Professions Code sections.

- Delete “The crimes or acts shall include, but not be limited to, the following:” at the end of the first paragraph.

The listing of crimes or acts, in addition to professional misconduct, is being relocated under new subsection (c) and additional substantial relationship criteria that CSLB must consider are being added under new subsection (b), thereby making the introductory phrase no longer necessary. The removal of this language will also allow the Board to more easily distinguish criteria specific to crimes contained in subsection (b) from those applicable to other grounds for discipline or denial of a license or registration in subsection (c) without appearing duplicative.

Addition of New Subsection (b):

Current law at Business and Professions Code section 7090 authorizes the Registrar of CSLB to investigate and deny or discipline any applicant, contractor, or home improvement salesperson. Any applicant, licensee, or registrant may appeal any action or decision by the Registrar to the full Board (Bus. & Prof. Code, § 7013).

This proposal will add a new introductory sentence and three new specific criteria that the Board or the Registrar must consider when making the substantial relationship determination about a crime as required by Business and Professions Code sections 481 and 493, effective July 1, 2020, as follows:

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 contractor or home improvement salesperson.

Current law under Business and Professions Code section 481 specifies that each board shall develop criteria for determining whether a crime is substantially related to a specific business or profession. Effective July 1, 2020, AB 2138 mandates under Business and Professions Code sections 481 and 493 that there are three criteria that boards must consider when evaluating whether a crime is substantially related to the regulated business or profession.

Pursuant to the new Business and Professions Code section 481(b), the substantial relationship criteria shall include all of the following: (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 the profession in which the applicant seeks licensure or in which the licensee is licensed.

Since Business and Professions Code sections 481 and 493 require the Board to use these three criteria in evaluating whether a crime is substantially related to the qualifications, functions, or duties of the profession, the Board proposes amending its current substantial relationship regulation with the addition of all three items listed under subsection (b)(1)-(3).

The new language also specifies that either the Board or the Registrar shall consider the substantial relationship criteria for the purposes of denial, suspension, or revocation of a license or registration because both the Board and Registrar are tasked with considering substantial relationship criteria in relation to criminal convictions under Sections 7013 and 7090 of the Contractors State License Law. This change is needed to more accurately convey who is authorized to make decisions regarding CSLB's licensing and enforcement cases. The addition of these criteria to 16 CCR section 868(b) will also permit CSLB to provide notice to interested parties of all of the Board's criteria for evaluating whether a crime is substantially related to the qualifications, functions, or duties of the profession in one convenient location.

Addition of New Subsection (c):

This listing of substantially-related crimes, professional misconduct, and acts is being relocated and renumbered to this subsection from the language that currently appears as lettered subsections under the existing introductory paragraph for 16 CCR section 868. It is also being revised, as appropriate, to reflect necessary changes and corrections to the existing language resulting from the enactment of AB 2138. In addition to minor grammatical and/or punctuation revisions to existing language to improve comprehension, this proposal would add a new subsection (c), as more specifically described below:

- Add a new introductory sentence that precedes the listing of what may be included as a substantially-related crime, professional misconduct, or act.

This proposal would add a new introductory sentence that includes “professional misconduct,” in addition to other statutory grounds for denial or discipline, to more accurately reflect the Board’s authority under Business and Professions Code sections 141 (relating to acts), 480(a)(2) (effective July 1, 2020), 490, and 7090 to deny or discipline on these grounds.

- Renumber existing subsection (a) to new subsection (c)(1) and add “or other state or federal laws governing contractors or home improvement salespersons.”

New subsection (c)(1) will be expanded to reflect that a violation of other state or federal laws governing contractors or home improvement salespersons will be considered substantially related and grounds for denial or discipline of a license or registration. This addition recognizes that a violation of the laws or regulations governing these professions in other states or under federal law are indicative of potential issues with the individual's competence; problems with personal or professional judgment; and inability to practice in a manner consistent with the health, safety, and welfare of the public. As a result, these proposed changes are necessary to give proper notice to those affected applicants, licensees, and registrants that the Board considers these violations to be "substantially related" to these professions, which could be a basis for license or registration denial, suspension, or revocation by the Registrar or Board pursuant to Business and Professions Code sections 141, 480, 490, or 7090.

- Renumber existing subsection (b) to new subsection (c)(2) and correct the reference citation for CSLB regulations from "California Administrative Code, Chapter 8, Title 16" to "California Code of Regulations, Title 16, Division 8."

CSLB's regulations are contained in Title 16, Division 8 of the California Code of Regulations. The existing reference in new subsection (c)(2) is an outdated reference to the prior Administrative Code and therefore should be corrected to accurately reflect the current legal authority.

- Renumber existing subsections (c), (d), and (e) to new subsections (c)(3), (c)(4), and (c)(5), respectively, and add "professional misconduct" where crimes and acts are referenced.

The renumbering and changes to new subsections (c)(3) through (5) are based on matters discussed under the "Amendments Throughout the Section" portion above. Effective July 1, 2020, Business and Professions Code section 480(a)(2) will authorize CSLB to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for "professional misconduct" under specified conditions.

This proposal would add references to "professional misconduct" to the Board's substantial relationship criteria regulation to more accurately reflect the Board's authority to deny on these grounds. The Board's existing substantial relationship criteria regulation sets forth what crimes or acts the Board believes are logically connected to a contractor's fitness or competence to practice the profession or to the qualifications, functions, or duties of the contractor's license.

Existing standards in these sections specify that a crime or act is considered substantially related if it:

1. Involves dishonesty, fraud, deceit, or theft with the intent to substantially benefit oneself or another or to substantially harm another;

2. Involves physical violence against persons; or
3. Indicates a substantial or repeated disregard for the health, safety, or welfare of the public. (Cal. Code Regs., tit.16, § 868, existing subsections (c)-(e)).

In the Board's experience, these existing standards and types of misconduct would be equally relevant when considering professional misconduct committed by an applicant before another licensing board. As a result, these proposed changes are necessary to give proper notice to those affected applicants, licensees, and registrants of what standards the Board will use in evaluating what professional misconduct the Board considers "substantially related" and that could be a basis for license or registration denial by this board pursuant to Business and Professions Code section 480.

Amendments to Note Portion:

Since the new changes to Business and Professions Code section 481 pursuant to AB 2138, effective July 1, 2020, will also be added to Business and Professions Code section 493, the Board proposes adding Business and Professions Code section 493 to the Note portion of this regulation to comply with the Authority standard in the Administrative Procedure Act.

In addition, since a substantially-related crime, professional misconduct, or act, as defined in 16 CCR section 868, would be a basis for denying an application or imposing discipline pursuant to Business and Professions Code sections 141, 480, 490, or 493, the Board proposes adding Sections 141 and 493 of the Business and Professions Code to the Note portion of this regulation to comply with the Reference standard in the Administrative Procedure Act.

Adoption of Section 868.1. – Criteria to Aid in Determining if Financial Crimes Are Directly and Adversely Related to Fiduciary Qualifications, Functions, or Duties of a Licensee or Registrant for the Purpose of Considering Denials of Applications.

Specific Purpose

There is no existing language relating to criteria for evaluating whether a felony financial crime is "directly and adversely related" to the "fiduciary qualifications, functions, or duties" of a licensee or registrant. Therefore, to address the new language in subsection (a)(1)(B) of Business and Professions Code section 480, CSLB is proposing the following specific regulatory actions for newly-created 16 CCR section 868.1 based on actual CSLB historical data (see table referred to as "Historical Financial Crime Convictions Resulting in CSLB's Denial of Licensure" in the "Underlying Data" section of this document):

Addition of New Section, Title, and Introductory Paragraph:

There is no existing regulatory language relating to this newly-added standard that is being required under provisions of AB 2138. This proposal would add a new section, title, and introductory paragraph to establish that a financial crime currently classified as

a felony shall be considered “directly and adversely related” to the professions if the crime involves dishonesty, fraud, deceit, or theft and results in direct financial benefit or harm, or an attempted benefit or harm. The addition of this new section, title, and introductory paragraph will help provide accurate notice to the regulated community regarding the purpose of this new regulation and what types of felony financial crimes CSLB considers directly and adversely related to the licensing and registration of the contractor and home improvement salesperson professions.

Effective July 1, 2020, with a few exceptions, pursuant to Business and Professions Code section 480(a)(1), CSLB’s ability to deny applications for a license or registration based on a substantially-related criminal conviction will be limited to the following:

1. The conviction occurred within the seven (7) years preceding the application date,
2. The applicant is presently incarcerated for the crime, or
3. The applicant was released from incarceration for the crime within the seven (7) years preceding the application date.

Effective July 1, 2020, AB 2138 also amends subsection (a)(1)(B) of Business and Professions Code section 480, providing an exception from the seven-year limitations contained in Business and Professions Code section 480(a)(1) in situations where the “applicant was convicted of a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties” of a business or profession.

The Legislature carved out this additional tool for several boards or bureaus that oversee professions where consumers can be particularly vulnerable to financial misconduct by a licensee or registrant – including CSLB for a contractor or home improvement salesperson applying for licensure or registration under the Contractors State License Law (Bus. & Prof. Code, § 480(a)(1)(B)(iii)). This exception permits CSLB to deny an application for a license or registration regardless of the seven-year limitation if the conviction was for a financial crime currently classified as a felony that is directly and adversely related to the fiduciary qualifications, functions, or duties of a contractor or home improvement salesperson.

This is essential to CSLB’s consumer protection mandate because many construction-related crimes include consumer financial harm, e.g., diversion of construction funds, grand theft. Since the “directly and adversely related” standard is a new and separate standard from the established substantial relationship criteria in 16 CCR section 868, AB 2138 at Business and Professions Code section 480(a)(1)(B) authorizes CSLB to adopt regulations to specify what types of financial felonies will meet this new standard and be considered grounds for denial of a license or registration under the law.

In developing a methodology for selecting the list of crimes to be included as felony financial crimes, CSLB Licensing Division staff compiled a list of all financial crimes for which CSLB had denied licensure over the previous five-year period (see table in the

“Underlying Data” section of this document entitled “Historical Financial Crime Convictions Resulting in CSLB’s Denial of Licensure” (FY 2013/14 through FY 2017/18)). This provided CSLB with a factual basis for determining which types of financial crimes and underlying conduct will likely present the greatest risk of harm to the consumer in the future. A review of the data shows that these crimes generally include the following types of conduct that would, in the Board’s experience, present the greatest risk of harm to a consumer: dishonesty, fraud, deceit, or theft.

While, technically, there are not specific “fiduciary qualifications, functions, or duties” for contractors and home improvement salespersons, there is an expectation of responsibility, competency, and trust in the financial dealings between these licensees and registrants and their clients, particularly when the financial transactions involve vulnerable consumers, such as the elderly and people for whom English is not their first language. Therefore, the “dishonesty, fraud, deceit, or theft” elements of this criteria are necessary to help CSLB identify those persons who are at greater risk of financially harming a consumer or of having a recurrence of their criminal behavior. Identifying these types of crimes will help mitigate risk of future harm to consumers because it will allow the Registrar or CSLB to exercise greater and more informed discretion in determining whether to grant, deny, or issue a probationary license to an applicant.

- Add within the introductory sentence a portion that sets forth three new specific criteria that CSLB will consider when making the “directly and adversely related” determination.

To further explain the circumstances under which a crime shall be considered directly and adversely related to the license or registration, the Board is proposing three results of the crimes that will be considered as factors by the Board in determining whether there are grounds for denial. Specifically, the felony financial crime must result in one of the following for this regulation to apply:

1. Direct financial benefit to the applicant or another person or entity,
2. Direct financial harm to another person or entity, or
3. An attempt to obtain direct financial benefit or cause direct financial harm to another person or entity.

The purpose of CSLB’s licensing program is to protect the public. As the courts have stated: “The purpose of such a proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent.” (*Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817).

The addition of these criteria will further assist the Board in exercising its discretion for the protection of the public by allowing the Board to consider denial of those applicants who have a demonstrated history of financial crimes that have resulted in direct financial

benefit to themselves or others, direct financial harm to others, or an attempt to obtain a direct financial benefit or cause direct financial harm. In the Board's experience, all three of these results (caused by the crimes of the applicant) are relevant to public protection because they demonstrate a direct relationship between the crime, the conduct that the Board seeks to avoid in the contractor and home improvement salesperson professions, and the actual or potential financial impact of the misconduct on others. These criteria are essential, particularly when used in conjunction with the "dishonesty, fraud, deceit, or theft" element above, because they help the Board to more accurately identify those applicants who, in the Board's opinion, present the greatest risk of financial harm to the public.

- Add a sentence that introduces the more detailed listing of felony financial crimes.

To provide notice to the regulated community regarding the specific types of crimes that will be considered directly and adversely related to the contractor and home improvements salesperson professions, CSLB proposes adding an introductory sentence and four types of felony financial crimes more specifically identified at subsections (a) through (d). The categories identified in this new regulation under subsections (a) through (d) are based on specific crimes that have been actual grounds for denial of licenses or registrations by CSLB in the last five years.

Historical Financial Crime Convictions Resulting in CSLB's Denial of Licensure ("list")

For ease of comprehension and to allow for consideration of similar crimes as grounds for denial of licensure in the future, CSLB used the elements of the crimes or the crimes' descriptions in the applicable code sections listed below to develop the list of crimes in subsections (a) through (d) and the definition in subsection (e). Those crimes include:

1. Insurance Code section 11880(a) (false or fraudulent statements for purpose of reducing premium, rate, or cost of insurance);
2. Penal Code section 115 (procure or offer false or forged documents for filing with a state office);
3. Penal Code section 368(d) (elder or dependent adult false personation or "identity theft" – including violation of Penal Code section 530.5, which includes obtaining "personal identifying information" to obtain credit, goods, services, real property, or medical information without person's consent);
4. Penal Code section 459 (commission of grand or petit larceny or burglary);
5. Penal Code section 470 (forgery and counterfeiting);
6. Penal Code section 476 (fictitious or altered bill, note, or check with intent to defraud);
7. Penal Code section 484 (theft);
8. Penal Code section 487 (grand theft);

9. Penal Code section 496 (stolen property);
10. Penal Code section 532 (money, labor, or property under false or fraudulent pretense);
11. Penal Code section 548 (dispose of property by theft or embezzlement with intent to defraud or prejudice insurer);
12. Penal Code section 550 (present false or fraudulent claim to insurer);
13. Welfare and Institutions Code section 10980 (false statement or representation to obtain public aid, e.g., welfare);
14. 18 U.S. Code section 371 (conspiracy to commit offense / defraud U.S.);
15. 18 U.S. Code section 1344 (defraud financial institution); and
16. 18 U.S. Code section 1957 (monetary transactions in property derived from a specified unlawful activity or “money laundering”).

Addition of New Subsection (a):

This proposal would add a new subsection (a) to identify a specific type of crime that shall be included as one that is directly and adversely related, as follows:

- A crime that involves “false, altered, forged, counterfeit, or fraudulent document(s), or the acquisition or provision of false or fraudulent statement(s).”

The addition of subsection (a) is based on the crimes referenced in numbers 1, 2, 5, 6, 12, and 13 from the list above. The five-year historical denial data show that approximately one-third of the denials over that time period fell into the category identified under subsection (a) involving false or fraudulent documents or statements. Given the documentation responsibilities of contractors and home improvement salespersons (e.g., drafting, obtaining and executing bids/estimates, contracts, building permits, warranties, or filing other documents with state and government agencies), this is an area of particular concern with respect to CSLB licensees and registrants and the consumers who hire them. An applicant who already has a history of a conviction of a crime that involves such false or fraudulent documents or statements can present a significant risk of financial harm to consumers if the documents they are tasked with executing are false, altered, forged, or fraudulent. As a result, the addition of this standard will help CSLB mitigate risk of future harm to consumers by allowing the Registrar or Board to exercise greater discretion in determining whether to grant, deny, or issue a probationary license to an applicant who has this history of misconduct.

Addition of New Subsection (b):

This proposal would add a new subsection (b) to identify a specific type of crime that shall be included as one that is directly and adversely related, as follows:

- A crime that involves “use of personal identifying information for an unlawful purpose, including illegally obtaining money, credit, goods, services, real property, or medical information (also known as identity theft).”

The addition of subsection (b) is based on the crimes listed in number 3 from the list above relating to the crime of “false personation” under Penal Code section 530.5. This crime specifically involves the use of personal identifying information for an unlawful purpose, including for the purpose of illegally obtaining money, credit, goods, services, real property, or medical information of another person without their consent, and was grounds for the denial of a license or registration in the last five years. This crime is more commonly understood by the public as the crime of “identity theft.” As a result, the proposed text includes a parenthetical “also known as identity theft” behind the legal description of this category of crime. This will enable the regulated community and staff to more easily identify this type of crime while remaining consistent with the legal standard for false personation contained in Penal Code section 530.5.

This category of crime is the least common for CSLB denial based on the five-year historical data, but it still represents a serious offense and a threat to potential consumers because it involves the victimization of the elderly or dependent adult (Penal Code section 368(d)). Contractors and home improvement salespersons are often inside consumers’ homes and can have access to sensitive and personal identifying information. A person with such convictions could present a significant risk of financial harm to a vulnerable population. As a result, the addition of this standard will help CSLB mitigate risk of future harm to consumers by allowing the Registrar or Board to exercise greater discretion in determining whether to grant, deny, or issue a probationary license to an applicant who has this history of misconduct.

Addition of New Subsection (c):

This proposal would add a new subsection (c) to identify a specific type of crime that shall be included as one that is directly and adversely related, as follows:

- A crime that involves “stolen property, embezzlement, grand theft, larceny, burglary, monetary transactions in property derived from a specified unlawful activity (also known as money laundering), or crimes related to obtaining money, labor, or property under false or fraudulent pretenses.”

The addition of subsection (c) is based on crimes in numbers 4, 7-11, and 16 from the list above and that were grounds for the denial of a license or registration in the last five years. This category of crimes is, by far, the most common of the financially-related crimes that were grounds for CSLB denials in the last five years in nearly two-thirds of the cases; the most common being grand theft (Penal Code section 487). Since contractors and home improvement salespeople often have access to the inside of clients’ homes and garages, it is imperative that CSLB is able to adequately review the circumstances surrounding such convictions of applicants with a history of theft-related crimes to protect the interests of consumers. As a result, the addition of this standard will help CSLB mitigate risk of future harm to consumers by allowing the Registrar or

Board to exercise greater discretion in determining whether to grant, deny, or issue a probationary license to an applicant who has a history of this misconduct.

Addition of New Subsection (d):

This proposal will add a new subsection (d) to identify a specific type of crime that shall be included as one that is directly and adversely related, as follows:

- A crime that involves “an attempt or conspiracy to commit such crimes listed in subsections (a), (b), or (c).”

CSLB’s goal for public protection is to prevent harm to a consumer before it occurs. Consistent with that public protection mandate, CSLB proposes to adopt a standard that will allow greater discretion to deny an applicant with a history of attempts or conspiracy to commit any of the crimes that CSLB considers directly and adversely related to the contractor and home improvement salesperson professions. The addition of subsection (d) is based on crimes in numbers 1 through 16 from the list above and that were grounds for the denial of a license or registration in the last five years.

On several occasions within the last five years, CSLB denied an application for a license or registration when the applicant’s criminal history contained a conviction that involved conspiracy to commit an offense pursuant to 18 U.S. Code section 371 (see crime number 14 from the list above). Similarly, an attempt to commit such crimes is equally worthy of CSLB’s review of the circumstances surrounding the conviction when considering whether to deny the application of such individuals because it shows the potential for committing the acts that create the most financial risk to the consumer. As a result, the addition of this standard will help CSLB mitigate the risk of future harm to consumers by allowing the Registrar or Board to exercise greater discretion in determining whether to grant, deny, or issue a probationary license to an applicant who has this history of misconduct.

Addition of New Subsection (e):

This proposal would add a reference for the definition of a term in the language, as follows:

- A reference to Section 530.55 of the Penal Code for the definition of “personal identifying information” that is contained in subsection (b).

Subsection (b) of this proposed regulation refers to crimes involving the use of “personal identifying information” in relation to what is essentially identity theft. However, this is not a commonly understood term and is susceptible to multiple meanings. Penal Code section 530.55 sets forth a detailed definition of “personal identifying information.” Therefore, rather than duplicating the definition in this regulation, subsection (e) references the meaning set forth in Penal Code section 530.55.

This reference to Penal Code section 530.55 is being provided to ensure clarity and notice to the regulated community and staff about what types of personal identifying information are covered under this section of law. Referencing the definition also ensures consistency in implementing the standards involving criminal false personation and permits CSLB to use an existing standard without repeating the lengthy and very thorough definition of what is considered personal identifying information already contained in Penal Code section 530.55.

Addition of New Note Portion:

This proposal would add the Note portion of the regulation, to include the following:

- Add new references as the Authority citation for Business and Professions Code sections 480 and 7008 relating to grounds for denial of a license and authorization to adopt rules and regulations in accordance with the Administrative Procedure Act, respectively.

The above sections of law are being added to the Note portion of this regulation to comply with the “Authority” standard in the Administrative Procedure Act. Pursuant to AB 2138, effective July 1, 2020, Business and Professions Code section 480 provides the Board the authority to adopt regulations regarding the new provisions relating to felony financial crimes that are directly and adversely related to the fiduciary qualifications, functions, or duties of a business or profession. Business and Professions Code section 7008 provides the Board general authority to adopt regulations in accordance with the provisions of the Administrative Procedure Act.

- Add new references as the Reference citation for Business and Professions Code sections 7.5, 480, 7069, 7073, 7090, and 7124 and Penal Code section 530.55 relating to the definition of conviction, grounds for denial of a license, fingerprint of applicants, rehabilitation and reapplication, suspension and revocation of a license, what constitutes a conviction, and the definition of personal identifying information, respectively.

Multiple sections of law are referenced in this regulatory section and are being added to the Note portion of this section to comply with the Reference standard in the Administrative Procedure Act. Business and Professions Code section 7.5 contains the definition of “conviction,” as used in this regulation. Business and Professions Code section 480 establishes grounds for denial of a license and creates the new “directly and adversely related” standard for felony financial crimes. Business and Professions Code section 7069 establishes acts and crimes as grounds for denial of licensure and sets forth the requirement for fingerprinting of applicants. Business and Professions Code section 7073 relates to grounds and procedures for denial of a license. Business and Professions Code section 7090 authorizes the Registrar to investigate and deny, suspend, or revoke a license on the grounds of acts or omissions. Business and Professions Code section 7124 identifies what constitutes a conviction and when a license may be suspended, revoked, or refused issuance. Penal Code section 530.55 contains the definition of “personal identifying information” as used in this section.

The addition of these criteria under 16 CCR section 868.1 will permit CSLB to provide notice to interested parties of all of the Board's criteria for evaluating whether a felony financial crime is directly and adversely related to the fiduciary qualifications, functions, or duties of a license or registration.

Amend Section 869. – Criteria for Rehabilitation.

Specific Purpose

The existing language of 16 CCR section 869 sets forth the criteria under which an applicant or licensee is considered to be rehabilitated. However, beginning July 1, 2020, Business and Professions Code section 480 will prohibit the Board from merely denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.” (§ 480, subd. (b), as added by AB 2138, Stats. 2018, ch. 995, § 4.) As a result of these and other changes enacted by AB 2138, CSLB is proposing the following specific regulatory actions to amend 16 CCR section 869:

Amendments Throughout the Section:

To improve comprehension and the readability of the regulation, changes are being proposed throughout this section for minor grammatical and/or punctuation revisions to existing language, as well as for instances where there are multiple occurrences of the same or similar language that requires revisions, as follows:

- Change “registrar” to “Registrar” to be consistent with terminology used in other regulations in this package.

The Registrar of Contractors is CSLB’s executive officer (Bus. & Prof. Code, § 7011), who is tasked with administering many of the enforcement provisions in the Contractors State License Law. To provide consistency among all sections in this rulemaking package and other existing regulations, the title of “Registrar” is being capitalized throughout all of the sections.

- Add “registration” and “registrant” where “license” and “licensee” are referenced to reflect the fact that CSLB regulates both licenses and registrations.

While Business and Professions Code section 482 refers to rehabilitation criteria when considering “the denial of a license” or “suspension or revocation of a license,” existing language of Business and Professions Code section 493 defines “license” to include “registration.” Since CSLB issues both contractor licenses and home improvement salesperson registrations (Bus. & Prof. Code, §§ 7072, 7153.1), language in this section is proposed to reflect both licenses/licensees and registrations/registrants because the content of the section relates to denial, suspension, or revocation of a license or registration. This will help avoid confusion for staff and the regulated community

regarding the scope of the Board’s authority to consider rehabilitation when considering a denial, suspension, or revocation of a license or registration.

- Add descriptive titles over multiple subsections within the regulation to identify different circumstances under which rehabilitation must be evaluated.

The addition of titles over each subsection (specifically, (b)(1)(A) through (E)) in Section 869 will help clarify the content of each individual subsection for the reader and make it easier for applicants and licensees to follow and to understand how the criteria will be applied under their individual circumstances.

Amendments to Subsection (a):

The existing subsection (a) is an introductory paragraph that sets up the criteria under which the Board evaluates an applicant’s or licensee’s rehabilitation and present eligibility for a license. In addition to minor grammatical and/or punctuation revisions to existing language to improve comprehension and the readability of the regulation, this proposal would amend subsection (a), as follows:

- Change “code” to “Code” in reference to the Business and Professions Code.

This proposal will capitalize “code” to be consistent with other regulations and the definition contained in 16 CCR section 810, which states, “‘Code’, unless otherwise defined, means the Business and Professions Code.” This would avoid confusion regarding which code is being referenced in the regulation. Therefore, the Board is proposing to change “code” to “Code” throughout this section.

- Add “on the ground that the individual was convicted of a crime” to focus subsection (a) specifically on situations where the applicant, licensee, or registrant was convicted of a crime and not for any other grounds for denial or discipline.

The addition of “on the ground that the individual was convicted of a crime” helps focus subsection (a) on criminal convictions, which will help distinguish it and its criteria from other subsections that follow that relate to other circumstances. This proposed change is being made to provide better organization and easier comprehension of the section.

- Add authority for the Registrar who acts on behalf of the Board, in addition to the existing authority of the Board, to consider the rehabilitation criteria for the purposes of denial, suspension, or revocation of a license or registration.

The new language specifies that either the Board or the Registrar shall consider the rehabilitation criteria for the purposes of denial, suspension, or revocation of a license or registration, similar to their authority to consider the substantial relationship criteria under 16 CCR section 868. Current law at Business and Professions Code section 7090 authorizes the Registrar of CSLB to investigate and deny or discipline any applicant, contractor, or home improvement salesperson. Any applicant, licensee, or registrant

may appeal any action or decision by the Registrar to the full Board (Bus. & Prof. Code, § 7013). Consequently, this change is needed to more accurately convey who is authorized to make decisions regarding CSLB's licensing and enforcement cases.

- Add language that the Board “or Registrar shall consider whether the applicant, licensee, or registrant made a showing of rehabilitation and is presently eligible or fit for a license or registration if the applicant, licensee, or registrant completed the criminal sentence at issue without a violation of parole or probation.”

Existing law under Business and Professions Code section 482 requires boards to develop criteria to evaluate the rehabilitation of an applicant or licensee when considering the denial or discipline of a license based on a conviction and to consider “all competent evidence of rehabilitation” in making such decisions. However, pursuant to AB 2138, beginning July 1, 2020, Business and Professions Code section 480(b) will prohibit boards from denying a license on the basis that the applicant was convicted of a crime (a misdemeanor or felony), or on the basis of the facts underlying a conviction, if the applicant “made a showing of rehabilitation pursuant to Section 482.”

In deciding whether to deny a license based on a conviction, the Board must consider evidence of the applicant's rehabilitation pursuant to the process established in the Board's statutes and regulations and as directed under Business and Professions Code section 482. Further, pursuant to changes to Business and Professions Code section 493(b)(2), effective July 1, 2020, under AB 2138, “A board shall not categorically bar an applicant based solely on the type of conviction without considering evidence of rehabilitation.”

As a result of the foregoing changes, CSLB needs to revise its regulations that establish criteria for evaluating rehabilitation when deciding whether to deny, suspend, or revoke a license or registration based on a conviction and subsequent rehabilitation. In particular, revisions to Business and Professions Code section 482(b) require the Board to consider whether an applicant or licensee “made a showing of rehabilitation” if:

1. The applicant or licensee completed the criminal sentence at issue without a violation of parole or probation or
2. The Board finds, after applying its rehabilitation criteria, that the applicant is rehabilitated.

Current regulations do not explicitly require the Board to consider whether the applicant made a showing of rehabilitation if the individual completed the criminal sentence at issue without a violation of parole or probation. Since Business and Professions Code section 482 will require the Board to consider whether, under those circumstances, the applicant or licensee has made a showing of rehabilitation for licensing or disciplinary purposes, the Board is adding this new requirement to this regulation to provide adequate notice to applicants, licensees, and registrants that this new requirement must be considered by the Board prior to considering denial, suspension, or revocation.

The addition of this text at the beginning of this section also allows the Board to clearly distinguish between this criteria and other criteria that the Board may use in considering denials, suspensions, or revocations based upon other statutory authority (e.g., Bus. & Prof. Code, § 7090).

- Add five specific criteria to subsection (a) that the Board or Registrar will consider in making the determination that an individual has made a showing of rehabilitation when considering denial or discipline based on a criminal conviction, as follows:
 1. The nature and gravity of the crime(s);
 2. The length(s) of the applicable parole or probation period(s);
 3. The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified;
 4. The terms or conditions of parole or probation, and the extent to which they bear on the applicant's rehabilitation; and
 5. The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

In earlier versions of the bill, AB 2138 mandated that boards “shall find that” an applicant or licensee had made a showing of rehabilitation if the applicant or licensee had completed their criminal sentence without a violation of parole or probation (see AB 2138 as amended in Assembly on April 2, 2018, § 5.) As originally drafted, this would have effectively eliminated the Board’s discretion to further inquire into rehabilitative efforts after an applicant’s, licensee’s, or registrant’s release from the criminal justice system.

However, the “shall find that” language in earlier versions of AB 2138 was stricken and replaced with the words “shall consider whether” following recommendations by the Senate Business, Professions and Economic Development Committee on June 20, 2018 (see AB 2138 as amended on June 20, 2018, § 5 and Committee on Business, Professions and Economic Development Analysis, dated June 18, 2018, p. 11, 19). As enacted, the Board will be authorized to exercise its discretion to “consider whether” an applicant or licensee has made a showing of rehabilitation if the applicant or licensee has completed the criminal sentence at issue without a violation of parole or probation pursuant to Business and Professions Code section 482(b), effective July 1, 2020.

To meet constitutional requirements, courts have found that criminal probation conditions must be reasonably related to the goals of enhancing rehabilitative and deterrence objectives and protecting the victim. (*People v. Jungers* (2005) 127 Cal.App.4th 698, 703.) However, courts typically reject the view that applicants and licensees who comply with the terms of their parole or probation are, per se, rehabilitated: “The fact that a professional who has been found guilty of two serious felonies rigorously complies with the conditions of his probation does not necessarily

prove anything but good sense.” (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473; see *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [“Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a[n] . . . applicant did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole”].)

The purpose of the Board’s licensing and enforcement proceedings are to protect the health, safety, and welfare of the public. As the courts have stated: “The purpose of such a proceeding is not to punish but to afford protection to the public upon the rationale that respect and confidence of the public is merited by eliminating from the ranks of practitioners those who are dishonest, immoral, disreputable, or incompetent.” (*Borror v. Department of Investment* (1971) 15 Cal.App.3d 531, 540; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817 [45 Cal.Rptr.2d 486, 490].)

To further assist the Board in exercising its discretion for the protection of the public, the Board proposes to use the five criteria listed at proposed subsection (a)(1)-(5) to evaluate whether the applicant, licensee, or registrant has made a “showing of rehabilitation” when they have completed their criminal sentence at issue without a violation of parole or probation. In CSLB’s experience, analyzing the nature and gravity of the crime(s) committed, the length and extent of the probation or parole periods, and any modifications to parole or probation will assist the Board in making a fair and balanced determination of whether the applicant, licensee, or registrant would be safe to practice the professions regulated by CSLB, with or without restrictions on a license or registration. In addition, analyzing the terms or conditions of parole or probation and the extent to which they bear on the applicant’s, licensee’s, or registrant’s rehabilitation will further assist the Board in determining whether the individual’s parole or probation adequately remediated the criminal conduct or whether future monitoring or restriction (e.g., probationary license) would be necessary for public protection.

Addition of New Subsection (b):

The new subsection (b) is an introductory paragraph that sets up additional criteria under which the Board shall evaluate an applicant’s, licensee’s, or registrant’s rehabilitation and present eligibility for a license or registration in situations where subsection (a) is not applicable because the grounds for denial are something other than a conviction of a crime (e.g., substantially-related professional misconduct, acts, or omissions) or in situations where the grounds are for a conviction of a crime, but the Board or Registrar has determined that the individual did not make a showing of rehabilitation based solely on the five criteria contained in subsections (a)(1)-(5).

In addition to minor grammatical and/or punctuation revisions to existing language to improve comprehension and readability of the regulation, this proposal would add subsection (b) to include the following:

- Add new subsection (b) introductory paragraph (if subsection (a) is inapplicable or no showing of rehabilitation under subsection (a), then new criteria shall be

considered by the Board or Registrar). Also add new subsection (b)(1) as an introductory paragraph providing that the Board or Registrar shall find an individual made a showing of rehabilitation and is eligible or fit for a license, if “after considering the following criteria and the provisions of (b)(2), the Board or Registrar finds that the individual is rehabilitated.”

As discussed above, AB 2138 grants the Board discretion to determine whether a showing of rehabilitation has been made. Proposed changes to these subsections are needed to further specify how that discretion will be exercised if two situations arise: (1) the individual fails to make a showing of rehabilitation under subsection (a) of this section or (2) the grounds for denial or discipline do not include a crime.

This proposal would specify at subsection (b) that if an applicant, licensee, or registrant did not make a showing under subsection (a), then the Board or Registrar shall apply the Board’s standard criteria in this subsection to further consider whether an applicant, licensee, or registrant has made a showing of rehabilitation. This allows individuals with criminal convictions two opportunities to demonstrate a showing of rehabilitation before a decision is made on an application or disciplinary case.

Subsection (b)(1) of this section would require the Board or Registrar to find an individual made a showing of rehabilitation and is eligible or fit for a license or registration “if, after considering the following criteria and the provisions of (b)(2), the Board or Registrar finds that the individual is rehabilitated.” Effective July 1, 2020, Business and Professions Code section 482(b)(2) will require the Board to find an applicant made a showing of rehabilitation (and therefore may not be denied a license per Business and Professions Code section 480(b)), if the Board finds, after applying its rehabilitation criteria, that the applicant is rehabilitated.

The existing regulation does not specifically address these new requirements. This proposal would permit the Registrar and the Board to consider the Board’s standard rehabilitation criteria in evaluating whether an applicant made a showing of rehabilitation when either the grounds for denial, suspension, or revocation do not involve a crime (e.g., acts or omissions are grounds for denial or discipline per Business and Professions Code section 7090) or the showing of rehabilitation was not made under subdivision (a) of this section.

In the Board’s experience, these existing standards would continue to be useful when considering denials or discipline based upon crimes, acts, omissions, or professional misconduct, which are grounds for denial and discipline for licensees, registrants, and applicants before the Board. These standards are needed to provide the Registrar and the Board with a fair, balanced, and thoughtful approach to evaluating whether sufficient rehabilitative efforts have been made to satisfy the Registrar and the Board that the applicant, licensee, or registrant is presently fit or eligible for a license or registration. As a result, these proposed changes are necessary to give the Board and Registrar discretion to analyze rehabilitation evidence using these criteria when considering a denial, suspension, or revocation of a license or registration and to give proper notice to

those affected individuals¹ of what standards the Registrar and the Board will use in evaluating whether a “showing of rehabilitation” has been made.

This proposal would also create new introductory paragraphs under subsections (b) and (b)(1) and add new subsections for new categories of rehabilitation pursuant to AB 2138, as well as revisions to existing subsections, for better organization and grouping of similar concepts within the regulatory proposal.

- Add new subsection (b)(1)(A) to establish rehabilitation criteria for individuals who may be considered for denial of a license or registration based on a substantially-related felony conviction (excluding serious felonies, registerable sex offenses, and felony financial crimes) within seven (7) years before submission of an application, stating that such applicants may be considered rehabilitated if five (5) years have passed from release from incarceration or completion of probation, without the occurrence of additional substantially-related criminal activity, professional misconduct, acts, or omissions.

New Distinctions in Categories of Crimes and Timelines for Showing Rehabilitation

When considering the denial, suspension, or revocation of a license based upon a substantially-related felony conviction under existing Section 869, an applicant may be considered rehabilitated if “seven (7) years have passed from the time of release from incarceration or completion of probation if no incarceration was imposed, without the occurrence of additional criminal activity or substantially-related acts.” This seven-year timeline or “benchmark” for a rehabilitation determination may be increased or decreased based on consideration of possible aggravating or mitigating factors contained in current subsection (a)(2), such as the nature and severity of the crime.

This existing standard at subsection (a)(1)(A) was imposed to cover all levels of felony convictions, regardless of how long ago the individual was convicted of the crime. The regulation allows CSLB the flexibility and discretion to focus its review and analysis on recent crimes and through examination of rehabilitative efforts using benchmarks that set specific timelines based upon the class of crime and the specified factors set forth in Section 869. Therefore, CSLB has had the authority to thoroughly consider an applicant’s rehabilitative efforts and exercise discretion accordingly, which includes the ability to disregard older felonies, decrease the seven-year time limit for lesser felonies (e.g., some drug offenses) or for individuals who complete relevant rehabilitation efforts (e.g., drug diversion or anger management programs), and to increase the timeline for more egregious crimes (e.g., violent or sexually-based crimes).

The existing standards for felonies, misdemeanors, and substantially-related acts have proven to be very effective tools in evaluating the rehabilitation of applicants for

¹ Although CSLB issues contractor licenses to both individuals and business entities, the rehabilitation criteria are applied to individuals, since all business entities are qualified for the license through natural persons (Bus. & Prof. Code, § 7068) who must submit fingerprints to be eligible for licensure (Cal. Code Regs., Title 16, § 869.1).

licensure since CSLB began fingerprinting in 2005. In the most recent five-year period, CSLB fingerprinted approximately 147,454 individuals. Of those, approximately 20% (30,007) had at least one conviction of some kind. Of those, only 262 individuals were denied a license or registration – that is less than one-fifth of one percent (0.0018 or 0.18%) of all of the applicants who fingerprinted for CSLB during that time period and less than one percent (0.0087 or 0.87%) of applicants with a criminal conviction of some kind during that time period. These extremely low denial rates based on criminal convictions demonstrate that the existing substantial relationship and rehabilitation criteria are working well for CSLB, applicants, and the public.

As a result, CSLB proposes to adopt language similar to existing text in this subsection that allows the Board or Registrar to consider an applicant rehabilitated if certain benchmarks are met. These benchmarks will include requiring five (5) years to pass before rehabilitation may be considered, consideration of specified factors in mitigation or aggravation (see new subsection (b)(2)) and an absence of any recurrence of substantially-related criminal activity, professional misconduct (professional misconduct is being added as explained above, due to enactment of new authority to deny on this basis), acts, or omissions that could also be grounds for denial.

With the passage of AB 2138, CSLB proposes adjusting its benchmark timelines and standards in this regulation to address changes to its authority to consider a criminal conviction as a ground for denial of a license or registration. Beginning July 1, 2020, Business and Professions Code section 480 will be amended and will permit boards to deny a license when an applicant has been convicted of a crime if the crime is substantially related to the qualifications, functions, or duties of the regulated business or profession and one of the following conditions exists:

1. The conviction occurred within the seven years preceding the application date, except that the seven-year limitation does not apply if the applicant was convicted of:
 - a. A serious felony under Penal Code section 1192.7;
 - b. A registerable sex offense under Penal Code section 290 (d)(2) or (3) effective January 1, 2021; or
 - c. A felony financial crime that is directly and adversely related to the fiduciary qualifications, functions, or duties of a specified business or profession regulated by the Accountancy Board, Professional Fiduciaries Bureau, Contractors State License Board, Bureau of Security and Investigative Services, or Cemetery and Funeral Bureau;
2. The applicant is presently incarcerated for the crime; or
3. The applicant was released from incarceration for the crime within the seven (7) years preceding the application date.

As a result, CSLB's authority to deny based upon a substantially-related criminal conviction will be limited to the following types of felonies: (1) felony crimes that occurred or for which the applicant was released from incarceration within seven (7)

years preceding the application date; (2) felony crimes classified as exempt from any timeframe based upon the nature of the crime, as described above and in Section 480(a)(1)(A)-(B) (“exempt”); and (3) felonies where the applicant is still incarcerated.

The existing regulation does not make these distinctions when assessing an applicant's criminal history or rehabilitation evidence. Therefore, changes to CSLB's regulations are being proposed to address these issues and distinctions for applicants based upon the type of crime and the time that has passed since the crime occurred that will become legally effective July 1, 2020.

Passage of Time: Proposed Five-Year Minimum Standard for Felonies Occurring Within Seven Years of Application

Subsection (b)(1)(A) relates to the first type of felony conviction that CSLB will be authorized to use as a basis for denial, effective July 1, 2020: felonies occurring within seven (7) years of application. Since having an applicant with one of these types of convictions has been determined by the Legislature to be less of a threat to the public than the exempt crimes designated in Business and Professions Code section 480(a)(1)(A) or (B), the benchmark timeline for these types of crimes is proposed to be reduced from the current seven-year standard for all felonies to five (5) years for these types of felonies.

Felonies are the most serious type of criminal offense. Felonies often involve serious physical harm (or threat of harm) to victims, but they also include offenses like white-collar crimes and fraud schemes. As a result, CSLB has determined that the timeline should be more than that expected from applicants who have misdemeanor convictions or other offenses, as discussed below under new subsections (b)(1)(D) and (b)(1)(E), respectively. Therefore, the timeline should fall somewhere between the seven (7) years (required for the more serious felony crimes) and the three (3) years (required for misdemeanors or other offenses). Imposing a five-year standard will help ensure an adequate track record of appropriate behavior before licensure should be considered.

The Board also proposes retaining authority to increase or decrease the timeline for showing rehabilitation from the five-year standard proposed in this subsection up to the seven-year maximum permitted under Business and Professions Code section 480(a), after considering the unique circumstances of the specific case using the criteria set forth in new subsection (b)(2), including the nature and severity of the crime, the time that has elapsed since the commission of the crime, and evidence of rehabilitation submitted by the applicant. This will also allow the Board or the Registrar greater discretion and further opportunity to examine rehabilitative efforts and opportunities for licensure, consistent with the goals of AB 2138, while ensuring public protection.

Consideration of Rehabilitation Contingent Upon Release from Incarceration or Probation and No Recurrence of Specified Misconduct

For the following reasons, CSLB proposes conditioning the five-year timeline on a factual demonstration that no misconduct that would be grounds for denial has occurred since the applicant's release from incarceration or probation if no incarceration was imposed. This is an existing standard in this section that the Board still believes is relevant to public protection and a showing of rehabilitation for these types of felonies, as well as for other crimes.

Generally, in the Board's experience, rehabilitation involves a two-step process. The first step is attitudinal change, and the second step is behavioral change to show that the risk to public health, safety, or welfare is no longer an issue. Behavioral change can be demonstrated through a consistent track record of appropriate behavior over a sufficiently extended period of time. That way, the Board and the public have some assurances that the person can practice these professions with continued safety being provided to the public. Without this track record, public protection may be compromised.

Further, this proposal for a five-year track record of appropriate behavior would apply only in cases where the applicant was released from incarceration or probation; CSLB will not count time spent on probation or while incarcerated towards an applicant's rehabilitative efforts or their providing a track record of appropriate behavior. As the courts have explained, persons "under the direct supervision of correctional authorities are required to behave in exemplary fashion..." As a result, little weight is generally placed on the fact that an individual "did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

Consequently, the Board believes that meeting the timelines in this section should always be contingent on making a factual showing of a consistent track record of appropriate behavior while outside the command of the criminal justice system, as well as proof that the individual has not re-offended. In other words, an applicant should be required to show that no additional criminal activity, professional misconduct, acts, or omissions that would be grounds for denial have occurred since release from incarceration or probation. These changes are necessary to ensure that CSLB meets its public protection mandate while implementing the public policy objectives of AB 2138.

Felonies Exempt from the Five-Year Timeline

Finally, CSLB proposes adding a provision that provides that this subsection, and hence the five-year benchmark timeline, does not apply to the exempt crimes that are addressed in this regulation at new subsection (b)(1)(B). This allows the Board to provide accurate notice to the regulated community regarding how these types of felonies will be considered by the Board or Registrar and avoids possible confusion regarding CSLB's authority to treat these types of serious felonies differently under the law.

- Add new subsection (b)(1)(B) to establish rehabilitation criteria for individuals who may be considered for denial of a license or registration based on convictions for a substantially-related serious felony, felony requiring sex offender registration, or a directly and adversely related felony financial crime, stating that such applicants may be considered rehabilitated if seven (7) years have passed from release from incarceration or completion of probation, without the occurrence of additional substantially-related criminal activity, professional misconduct, acts, or omissions.

Passage of Time for Exempt Felonies: Proposed Seven-Year Minimum Standard

As discussed above and as provided in Business and Professions Code section 480(a)(1)(A)-(B), effective July 1, 2020, certain felony crimes will be classified as exempt from any timeframe or other restriction, based upon CSLB's discretion, due to the nature of the crime. These exempt crimes include "serious" felonies as defined in Penal Code section 1192.7, crimes requiring registration as a sex offender under Penal Code section 290(d)(2) and (d)(3), and felony financial crimes determined by the Board to be directly and adversely related to the contractor or home improvement salesperson profession. Current regulations do not set separate benchmark timelines or distinguish these types of felonies from others; however, this proposal will adopt such standards.

This new subsection is comparable to subsection (b)(1)(A), discussed above, but it relates to the more serious crimes identified under Business and Professions Code section 480(a)(1)(A) and (B) and as defined more specifically in proposed regulation Section 868.1. The Board proposes using a timeline that is comparable to the existing standard for all felony convictions for these types of felonies. As discussed above, this seven-year timeline has proven to be a very sensible rehabilitation evaluation tool, resulting in very few denials, while still requiring a longer track record of appropriate behavior to meet minimum rehabilitation expectations. So, while CSLB's rehabilitation criteria does not overburden or disproportionately impact applicants, it serves its purpose well by keeping applicants who fail to make a showing of rehabilitation under these criteria and who present the greatest risk of harm to the public from obtaining licensure. Consequently, these proposed changes are necessary to retain this thoughtful approach to evaluating the most serious felonies.

In addition, based on the provisions of existing subsection (a)(2) (renumbered to (b)(2) in this proposal), this seven-year time limit could still be decreased or increased after considering the unique circumstances of the specific case, including the nature and severity of the crime, the time that has elapsed since the commission of the crime, and evidence of rehabilitation submitted by the applicant. This will allow the Board or the Registrar greater discretion and further opportunity to examine specific rehabilitative efforts and opportunities for licensure, consistent with the goals of AB 2138, while ensuring public protection.

Consideration of Rehabilitation Contingent Upon Release from Incarceration or Probation and No Recurrence of Specified Misconduct

For the same reasons provided for in subsection (b)(1)(A) above, CSLB proposes to condition this seven-year timeline in subsection (b)(1)(B) on a factual demonstration that no misconduct that would be grounds for denial has occurred since the applicant's release from incarceration or probation if no incarceration was imposed. This is an existing standard that the Board still believes is relevant to public protection and consideration of a showing of rehabilitation for these types of felonies, as well as for other crimes.

Behavioral changes can be demonstrated through a consistent track record of appropriate behavior over a sufficiently extended period of time. That way, the Board and the public have some assurances that the person can practice the contractor or home improvement salesperson profession with continued safety to the public. Without this track record, public protection may be compromised.

Further, this proposal will apply only in cases where the applicant was released from incarceration or probation, and CSLB would not count time spent on probation or while incarcerated towards an applicant's rehabilitative efforts. Consequently, the Board believes that meeting the timelines in this subsection should always be contingent on making a factual showing of a consistent track record of appropriate behavior when an individual is no longer under the command of the criminal justice system, as well as proof that the individual has not re-offended. In other words, an applicant should be required to show that no additional criminal activity, professional misconduct, acts, or omissions that would be grounds for denial have occurred since release from incarceration or probation to truly demonstrate rehabilitation. These changes are necessary to ensure that CSLB meets its public protection mandate while implementing the public policy objectives of AB 2138.

- Renumber existing subsection (a)(1)(A) to (b)(1)(C) and amend the language to focus the subsection on the establishment of rehabilitation criteria for individuals for whom the Board or Registrar may be considering suspension or revocation of the license or registration based on a substantially-related felony conviction, stating that such licensees or registrants may be considered rehabilitated if seven (7) years have passed from release from incarceration or completion of probation, without the occurrence of additional criminal activity, acts, or omissions.

Current regulation sets one uniform seven-year timeline and standard for evaluating rehabilitation for crimes involving felony convictions for both applicants and licensees. However, effective July 1, 2020, Business and Professions Code section 480 will impose new limitations on CSLB's authority to take action to deny a license based upon a felony conviction, as more thoroughly discussed above. As a result, CSLB is proposing to distinguish timelines for felony convictions for applicants from timelines for felony convictions for licensees or registrants.

The current subsection will be newly renumbered to subsection (b)(1)(C) and specifically apply only to discipline (i.e., suspension or revocation) of existing licenses and registrations based on felony convictions pursuant to Business and Professions Code sections 490 and 7090. While this section is being reworded and restructured to limit this subsection to discipline and remove implied authority to handle denials in the same manner as discipline, the essential elements of the regulation pertaining to discipline will remain the same and will not be amended under this proposal. Exceptions include a newly-added provision for “omissions that also could be grounds for suspension or revocation” based on language in Business and Professions Code section 7090 and the insertion of the word “registrant” to provide accurate notice to the regulated community that the regulation applies also to home improvement salespersons. The phrase “substantially-related” is also being moved before the words “criminal activity” to provide more accurate notice to the regulated community that CSLB’s authority to deny or discipline is premised upon a finding that the crime, professional misconduct, or act is substantially related to the qualifications, functions, or duties of the license or registration consistent with Business and Professions Code sections 141, 490, 7090, and 7123.

This subsection was originally developed to also cover rehabilitation criteria for the denial of licenses, but that portion of the section is being relocated to the new subsections (b)(1)(A) and (B) due to changes in the Board’s authority to consider criminal convictions, as described above.

As discussed above, these existing rehabilitation criteria have been in existence since 2006 and provide a thoughtful approach to processing enforcement cases. Further, due to the serious nature of felonies and possible harm to the public that could be caused by an active licensee or registrant, CSLB proposes retaining its current discretion to not consider rehabilitation until seven years have passed from the licensee’s or registrant’s release from incarceration or probation if no incarceration was imposed. In addition, since changes to the Board’s authority to process criminal history under AB 2138 apply mainly to applicants for initial licensure and not licensee or registrant disciplinary matters, the Board has determined that no further amendments need to be made to this subsection.

- Renumber existing subsection (a)(1)(B) to (b)(1)(D) and amend the language to focus the subsection on the establishment of rehabilitation criteria for individuals for whom the Board or Registrar may be considering denial, suspension, or revocation of the license or registration based on a substantially-related misdemeanor conviction, stating that such applicants, licensees, or registrants may be considered rehabilitated if three (3) years have passed from release from incarceration or completion of probation, without the occurrence of additional substantially-related criminal activity, acts, or omissions.

Newly renumbered subsection (b)(1)(D) relates to denial of licenses or registrations and the discipline of existing licenses and registrations based on misdemeanor convictions

pursuant to Business and Professions Code sections 480, 490, 7090, and 7123. While this subsection is being reworded and restructured, the essential elements of the current regulation remain the same and will not be amended under this proposal, with the following exceptions: (1) a newly-added provision for “omissions that also could be grounds for denial, suspension, or revocation” based on language in Business and Professions Code section 7090; (2) insertion of the word “registrant;” and (3) placement of the term “substantially-related” before the words “criminal activity.” This is needed to provide more accurate notice to the regulated community regarding the scope of CSLB’s jurisdiction to regulate and enforce the laws under its jurisdiction.

As discussed above, the existing rehabilitation criteria have been in existence since 2006 and provide a thoughtful approach to processing licensing and enforcement cases for the protection of the public. The amendments of AB 2138 did not change any provisions of law that would necessitate further revisions of this subsection. The three-year timeline established in this subsection for misdemeanor convictions is below the seven-year threshold created by AB 2138. However, based on the provisions of existing subsection (a)(2) (renumbered to (b)(2) in this proposal), that time limit could still be decreased or increased up to the seven-year maximum after considering the unique circumstances of a specific case, including other factors relating to the crime and the applicant’s, licensee’s, or registrant’s behavior or circumstances since the conviction. As a result, CSLB believes that these changes are necessary to retain a process that balances the need for public protection while maintaining CSLB’s discretion to address those cases that present harm or risk of harm to the public.

- Renumber existing subsection (a)(1)(C) to (b)(1)(E) and amend the language to focus the subsection on the establishment of rehabilitation criteria for individuals for whom the Board or Registrar may be considering denial, suspension, or revocation of the license or registration based on substantially-related professional misconduct, acts, or omissions, stating that such applicants, licensees, or registrants may be considered rehabilitated if three (3) years have passed from the time of the commission of the professional misconduct, act, or omission, without the occurrence of additional substantially-related criminal activity, acts, or omissions.

Newly renumbered subsection (b)(1)(E) relates to denial of licenses or registrations and the discipline of existing licenses and registrations based on professional misconduct, acts, or omissions pursuant to Business and Professions Code sections 141, 480, and 7090. While this section is being reworded and restructured, the essential elements remain the same and will not be amended under this proposal, with the exception of newly-added provisions discussed below.

Effective July 1, 2020, Business and Professions Code section 480(a)(2) will authorize the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for “professional misconduct” under specified conditions. Therefore, CSLB proposes regulatory language for this section to add the term “professional misconduct” to this subsection to

accurately reflect a complete list of all relevant grounds for denial or discipline under CSLB's jurisdiction. Providing a complete list to be used with the existing standards will also provide greater notice to the regulated community regarding how rehabilitation evidence will be treated by the Board or Registrar when considering these grounds for denial or discipline.

In addition, this proposal would insert the words "or registrant" after "licensee" to provide accurate notice to the regulated community of CSLB's jurisdiction and that the regulation applies also to home improvement salespersons, who also may be subject to denial or discipline as set forth in Business and Professions Code sections 141, 480, and 7090.

Existing law at Business and Professions Code section 480 authorizes the Board to deny an application for licensure based on an "act" that if done by a licensee would be grounds for suspension or revocation of the license. Effective, July 1, 2020, AB 2138 removes that provision of Business and Professions Code section 480. However, the Board is still authorized to deny an application or discipline a license or registration on this basis pursuant to Business and Professions Code sections 141 and 7090, as well as for any "omissions" as set forth in Article 7 of the Contractors State License Law.

Specifically, Section 7090 states that the Registrar may deny, suspend, or revoke any license or registration if the applicant, licensee, or registrant is "guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action." As a result, the Board's rehabilitation criteria must also include consideration of rehabilitation evidence for all three of these other types of conduct, other than criminal convictions, that may constitute grounds for denial or discipline. To help avoid confusion about CSLB's authority to deny or discipline on these grounds, CSLB proposes adding the phrases "or for other acts or omissions that are grounds for denial, suspension, or revocation" and "omissions that also could be grounds for denial suspension, or revocation" to this subsection.

The word "additional" is being added to make this subsection consistent with other existing text in this regulation and for easier understanding of when the Board or Registrar may consider rehabilitation according to the standards in this section. In addition, "substantially-related" is also being moved before the words "criminal activity" to provide more accurate notice to the regulated community that CSLB's authority to deny or discipline is premised upon a finding that the crime, professional misconduct, act, or omission is substantially related to the qualifications, functions, or duties of the license or registration consistent with Business and Professions Code sections 141, 480, 490, 7090, and 7123.

As discussed above, the existing rehabilitation criteria have been in existence since 2006 and provide a thoughtful approach to processing licensing and enforcement cases for the protection of the public. The amendments enacted by AB 2138 did not change any provisions of law that would necessitate further revisions to this subsection. The three-year timeline being established in this subsection for substantially-related

professional misconduct, acts, or omissions is below the seven-year threshold created by AB 2138 for denials of initial licensure. However, based on the provisions of existing subsection (a)(2) (being renumbered to (b)(2) in this proposal), that time limit could still be decreased or increased up to the seven-year maximum after considering the unique circumstances of the specific case, including other factors relating to the offense and the applicant's, licensee's, or registrant's behavior or circumstances since the offense. As a result, CSLB believes that these changes are necessary to retain a process that protects the public by maintaining CSLB's discretion to address those cases that present harm or risk of harm to the public.

- Update reference in existing subsection (a)(2) (proposed to be newly renumbered to subsection (b)(2)) by changing (a)(1) to (b)(1) because that subsection is being renumbered, as discussed above.

Existing subsection (a)(1) is being proposed to be renumbered to subsection (b)(1). Therefore, the reference to (a)(1) in this subsection must now be updated to (b)(1) to reflect the correct section of the regulation and to improve the readability of the regulation.

- Amend newly-renumbered subsections (b)(2)(A) through (C), (E), (F), and (H) with the addition of "professional misconduct" and "or omission(s)" to each of these subsections. Add the words "or registrant" to (b)(2)(D), (F), and (H).

These newly-renumbered subsections relate to criteria for increasing or decreasing the amount of time needed to demonstrate rehabilitation when considering the denial of licenses or registrations and the discipline of existing licenses and registrations based on crimes, professional misconduct, acts, or omissions pursuant to Business and Professions Code sections 141, 480, 490, 7090, and 7123. While these subsections require some amendment to ensure greater accuracy regarding CSLB's authority, the essential elements for these subsections remain the same, with the following exceptions.

Effective July 1, 2020, Business and Professions Code section 480(a)(2) will authorize the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for "professional misconduct" under specified conditions. Existing regulations provide a list of these eight criteria at subsections (a)(2)(A)-(H) that can be considered to increase or decrease the timelines needed to show whether an applicant or licensee will be considered rehabilitated. These factors include aggravating or mitigating factors, such as:

- (A) The nature and severity of the crime or act,
- (B) Evidence of any subsequent crime or act,
- (C) The time that has elapsed since commission of the crime or act,
- (D) The extent to which the applicant or licensee has complied with any terms of parole or probation,

- (E) Consistent work history subsequent to the crime or act,
- (F) Documents or testimony from credible character references,
- (G) Evidence of expungement proceedings, and
- (H) Other relevant evidence of rehabilitation submitted by the applicant or licensee.

Subsections (a)(2)(A)-(C), (E), (F), and (H) currently state the types of misconduct that may be grounds for denial or discipline along with the factors that the Board shall consider to possibly increase or decrease the time needed to show rehabilitation to the satisfaction of the Board or Registrar. However, while the regulation currently mentions crimes or act(s) as grounds for denial or discipline, these subsections do not provide a complete list of the grounds for denial or discipline within each subsection.

Therefore, CSLB proposes amending the regulatory language for this section to add “professional misconduct” (as authorized by Business and Professions Code section 480, effective July 1, 2020) and “omissions” (as authorized by Business and Professions Code section 7090) to the current list of factors at newly-renumbered subsections (b)(2)(A)-(C), (E), (F), and (H). These additions will allow CSLB to accurately reflect a complete list of all relevant grounds for denial or discipline that may be considered by the Board or Registrar, in their discretion, when they are considering whether to increase or decrease the amount of time needed to demonstrate rehabilitation.

Finally, the existing regulatory language at newly renumbered subsections (b)(2)(D), (F), and (H) refers to only “licensee” or “licensee’s,” but CSLB also registers and denies applications for home improvement salespersons. In addition, Business and Professions Code section 493 defines “license” to include “registration.” Therefore, this proposal will add references to “registrant” or “registrant’s” to more accurately reflect CSLB’s licensing authority and applicability of the regulatory proposal.

- Update language in existing subsection (G), striking “expungement proceedings” because the Penal Code sections referenced in the subsection do not actually relate to expungements, but rather different types of court actions. In addition, add language to accurately represent the outcomes of the identified Penal Code sections and add references to two additional Penal Code sections pursuant to subsections (a)(2) and (c) of Business and Professions Code section 480.

Effective July 1, 2020, Business and Professions Code section 480(c) will prohibit the Board from denying a license “on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement.” As a result, CSLB will lose the ability to consider any criminal conviction as grounds for denial where an applicant for initial licensure has received one of the aforementioned dismissal actions from a court or successfully obtained relief under any comparable dismissal or expungement proceeding. However, the Board’s discretion to consider these proceedings as a factor that might lessen the timeline for

rehabilitation is still applicable in disciplinary and petition matters because these areas of law were not amended by AB 2138. Nevertheless, CSLB proposes striking references to “expungement proceedings” and making other clarifying changes, as discussed below.

Language in existing subsection (a)(2)(G) references evidence of conviction dismissal only under Penal Code section 1203.4 in relation to criteria that must be considered when determining if an applicant has demonstrated rehabilitation after their conviction(s). As these recent amendments to Business and Professions Code section 480 demonstrate, there are other dismissal or “expungement” type proceedings in the California Penal Code other than just Penal Code section 1203.4 that a criminal defendant may use to obtain relief from the penalties of a conviction. For consistency with these Penal Code provisions and for accurate notice to staff and the regulated community regarding the types of proceedings that the Board or Registrar will consider as a mitigating factor in disciplinary and petition cases, CSLB proposes adding references to Penal Code sections 1203.4a, 1203.41, 1203.42, and 1203.425 to this subsection.

In addition, the language in subsection (a)(2)(G) should be updated to reflect more accurately the actions that a court could take to render an order under the applicable Penal Code provisions. Like Penal Code section 1203.4, subsection (a) of Penal Code sections 1203.4a, 1203.41, 1203.42, and 1203.425 permit a criminal defendant to petition the court to withdraw their plea of guilty or nolo contendere and enter a plea of not guilty; or, if they had been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which they had been convicted. Penal Code sections 1203.4a(e), 1203.41(d), and 1203.42(c) also indicate that a criminal defendant may be required to reimburse the criminal court for actual costs of services rendered, whether or not a petition is granted and the records are “sealed or expunged.”

In consideration of the foregoing, the words “expungement proceedings” will be deleted and replaced with the words “a plea of guilty or of nolo contendere, a verdict of guilty, or a conviction having been withdrawn, set aside, or dismissed, and records having been sealed or expunged.” These changes are necessary to more accurately describe to staff and a licensee, registrant, or petitioner the actions that a criminal court could take, as stated above under Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, and 1203.425 and that could be considered as rehabilitation evidence by the Board or Registrar.

- Amend subsection (H) with the addition of “or diversion” to existing text that refers to “a drug and/or alcohol aversion program” when the offense involved drug and/or alcohol use.

The language in existing subsection (a)(2)(H) refers to “a drug and/or alcohol aversion program” when the crime or act involved drug and/or alcohol use; however, that language may not reflect more common rehabilitation programs in this area. According to Merriam-Webster’s dictionary, “aversion” means “a feeling of repugnance toward something with a desire to avoid or turn from it.” Whereas, “diversion” means “the act or an instance of diverting or straying from a course, activity, or use.”

It is CSLB’s understanding that aversion therapy has existed in different contexts as a behavioral therapy meant to make a person give up an undesirable habit by causing them to associate it with an unpleasant effect or discomfort. In the criminal justice system, as well as in administrative enforcement matters for CSLB, a diversion program is a rehabilitation program meant to help remedy behavior that lead to the original arrest. Therefore, while there may be some drug and alcohol rehabilitation programs in existence that are aversion based, it has been CSLB’s experience that diversion programs are the more common rehabilitation programs used by criminal defendants, as well as respondents in misconduct cases before state licensing boards. As a result, to more accurately describe the types of rehabilitation programs that applicants, licensees, or registrants may use to make a showing of rehabilitation, CSLB proposes to add the words “or diversion” before the word “program.” Adding this specificity will also help avoid confusion for the regulated community and give more opportunity to make a showing of rehabilitation to applicants, licensees, and registrants.

- Renumber existing subsection (b) to (c) and amend the language to include registration of home improvement salesperson petitions and an additional reference to the newly-created subsection (b) where existing language refers only to subsection (a).

With the addition of a new subsection (b) to this regulation, as described above, this existing subsection (b) must be renumbered to (c) to accommodate this new subsection. CSLB also proposes adding “or the registration of a home improvement salesperson” to the types of petitions for reinstatement that may be considered by CSLB. This will provide more accurate notice to the public that CSLB may also consider petitions for reinstatement from its registrants and not just its contractor licensees. In addition, the reference to criteria specified in subsection (a) must be expanded to include the newly-created subsection (b) to help ensure that CSLB has a thoughtful approach to analyzing whether a showing of rehabilitation has been made for applicants, licensees, registrants, or petitioners.

This proposal would retain the Board’s current authority to evaluate petitioners for reinstatement of a license or registration using the same rehabilitation criteria as for licensees or registrants. The existing regulation authorizes the Board to analyze evidence of rehabilitation submitted by a petitioner for reinstatement using the same criteria as for initial applicants or existing licensees. However, changes to the law required by AB 2138 mean that CSLB will be limited in its discretion to consider crimes as a legal basis for denial when evaluating the past conduct of initial applicants (as discussed more fully under the rationale for Section 869, above).

However, those statutory limitations will not apply to disciplinary matters or petitioners for reinstatement. As the California Court of Appeal has explained, a petitioner for reinstatement is “not in the position of an untried newcomer, but a fallen licentiate. Under the circumstances, it is not unreasonable for the Board to be exacting in its requirements as to proof of reform.” (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

In CSLB’s experience, using the same criteria as those used for licensees and registrants helps ensure a fair and balanced approach to analyzing whether all current and past licensees or registrants have made a showing of rehabilitation, while ensuring a “fallen” licensee or registrant meets a more exacting standard to show rehabilitation than an initial applicant.

The addition of these criteria to 16 CCR section 869 will permit CSLB to provide notice to interested parties of all of the Board’s criteria for evaluating whether a petitioner has demonstrated their rehabilitation and fitness for reinstatement of a license or registration.

Amendments to Note Portion:

This proposal would add sections of law to the Note portion of the regulation, as follows:

- Add new references to the Reference citation for indicated Business and Professions Code sections, as follows: 7.5 for the “conviction” definition, 141 regarding disciplinary action of a licensee based on the substantially-related acts that lead to disciplinary action by another agency or jurisdiction of a license based on acts, 481 relating to the substantial relationship criteria, 488 regarding hearing requests, 493 regarding the evidentiary effect of a record of conviction, and 7090 relating to investigations and disciplinary action, as well as Penal Code sections 1203.4, 1203.4a, 1203.41, 1203.42, and 1203.425 relating to convictions that have been withdrawn, set aside, or dismissed.

Since the Board is required to consider rehabilitation evidence prior to considering denial or discipline, the Board proposes adding the relevant sections of the Business and Professions Code and the Penal Code noted above to the Notes section of this regulation to comply with the “Reference” standard in the Administrative Procedure Act.

Repeal Section 869.5. – Inquiry into Criminal Convictions.

Specific Purpose

The existing language of 16 CCR section 869.5 sets forth parameters under which the Board may conduct an inquiry into criminal convictions. This present authority is derived from Business and Professions Code section 493(a), which permits the Board to inquire into the circumstances of a crime for an applicant or licensee to fix the degree of discipline or to determine whether the conviction is substantially related to the

qualifications, functions, or duties of the license in question. However, effective July 1, 2020, that language will be repealed.

In addition, new limitations on the Board's authority contained in Business and Professions Code section 480(f)(2) adopted under AB 2138, effective July 1, 2020, will prohibit the Board from requiring an applicant to disclose information or documentation regarding their criminal history. As a result of these impending statutory changes, CSLB proposes the following specific regulatory action for 16 CCR section 869.5:

Repeal Entire Regulation:

This proposal would simply repeal this regulation in its entirety, including the title and the Note at the end of the section, because much of the existing regulation will be superseded by these statutory amendments. Further, leaving the regulation in place might cause confusion about compliance with Section 480(f)'s mandate to not require criminal history from applicants. To ensure public protection, CSLB will simply independently investigate applicants as authorized in Business and Professions Code section 7090, which provides the Registrar the authority to "investigate any applicant." As a result, this regulation is no longer necessary.

Amend Section 869.9. – Criteria to Aid in Determining Earliest Date a Denied Applicant May Reapply for Licensure.

Specific Purpose

Business and Professions Code section 7073 requires the Board to develop criteria, similar to the criteria to evaluate rehabilitation, to establish the earliest date on which a denied applicant may reapply for licensure or registration with the Board. The existing language of 16 CCR section 869.9 sets forth the criteria under which a denied applicant may reapply for a license. Based upon these criteria, the Registrar may consider whether to set the reapplication date for a denied applicant higher or lower up to the statutory maximum of five years from the effective date of the decision or service of notice of denial under Section 7073(b). However, since the existing provisions fail to address new standards required to be considered for applicants after enactment of AB 2138, effective July 1, 2020, and other clarifying changes needed to be made, CSLB is proposing the following specific regulatory actions for 16 CCR section 869.9:

Amendments Throughout the Section:

Changes are being proposed throughout the section for minor grammatical and/or punctuation revisions to existing language to improve comprehension and readability of the regulation, as well as for instances where there are multiple occurrences of the same or similar language that requires revisions, as follows:

- Change "registrar" to "Registrar" to be consistent with terminology used in other regulations in this package.

The Registrar of Contractors is the executive officer for the Board. To maintain consistency among all sections in this rulemaking package and other existing regulations, the title of “Registrar” is being capitalized throughout all of the sections.

- Add “registration” and “registrant” where “license” and “licensee” are referenced to reflect the fact that CSLB regulates both licenses and registrations.

While Business and Professions Code section 486 refers to where the Board “has denied an application for a license” and the “earliest date on which the applicant may reapply for a license,” Business and Professions Code section 493 defines “license” to include “registration.” Since CSLB issues both licenses and registrations, language in this section is being proposed to be added to this section to reflect both licenses/licensees and registrations/registrants because the content of the section relates to reapplication after an applicant has been denied a license or registration to help avoid confusion regarding the applicability of this section and the Board’s jurisdiction.

- Add “professional misconduct” and “omission(s) that also could be grounds for denial” because, in addition to the existing language regarding conviction of a crime or an act, the reapplication date criteria also applies to individuals who have occurrences of professional misconduct and omissions.

Effective July 1, 2020, Business and Professions Code section 480(a)(2) will authorize the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for “professional misconduct” under specified conditions. In addition, Business and Professions Code section 7090 authorizes the Board to deny an applicant for any act or “omission” set forth in Article 7 of the Contractors State License Law. Therefore, CSLB is proposing that the regulatory language for this section be amended to add “professional misconduct” and “omission(s)” to the other identified grounds for denial to the subsections of this regulation. This would more accurately reflect a complete list of all grounds for denial or discipline under CSLB’s jurisdiction.

- Relocate “substantially-related” under existing and newly-renumbered subsections (a)(1), (a)(3), and (a)(4) and new subsection (a)(2) to clarify that any additional occurrence listed be substantially related and also could be grounds for denial, as well as add “that were grounds for denial” under newly-renumbered subsections (a)(8) through (10) and existing subsection (a)(11) to clarify that the criteria relate to the grounds for previous denial of the applicant.

The term “substantially-related” is being moved before the words “criminal activity” to provide more accurate notice to the regulated community that CSLB’s authority to deny is premised upon a finding that the crime, professional misconduct, or act is substantially related to the qualifications, functions, or duties of the license or registration consistent with Business and Professions Code sections 480, 7090, and 7123. Subsections (a)(8)-(10) were reworded to make it clearer that the rehabilitation

evidence submitted has to show acknowledgement of the offense and how it is related to the crime, professional misconduct, act(s), or omission(s) that were the grounds for denial.

Current regulations set forth types of rehabilitation evidence considered by the Board in setting a reapplication date, including compliance with parole or probation, consistent work history subsequent to the crime or act, and documents or testimony of credible individuals (character references). However, these subsections do not explicitly state that the aforementioned evidence has to acknowledge or bear some connection to the past crimes or acts “that were the grounds for denial.” This proposal would add that text, which will help ensure that a correlation between the alleged ground for denial and the rehabilitation evidence exists and to show that the evidence offered by the applicant is relevant to the issues under consideration by the Registrar.

Amendments to Subsection (a):

Existing subsection (a) is an introductory paragraph that sets up the criteria under which the Board evaluates an applicant’s earliest date of reapplication after having been denied licensure. In addition to minor grammatical and/or punctuation revisions to existing language to improve comprehension, this proposal would amend subsection (a), as follows:

- Change “subdivision” to “subsection” in reference to a subsection of Business and Professions Code section 480 and make other grammatical “clean up” or other nonsubstantive changes to the regulation.

For consistency purposes within this regulatory package and in existing regulations, the Board is proposing to simply use the term “subsection” rather than “subdivision.”

- Add “of denial” to clarify the type of notice under Business and Professions Code section 485(b) that is being referenced.

This subsection mentions the “service of the notice under Section 485(b).” The addition of the phrase “of denial” clarifies what type of notice is being discussed in the regulation to resolve any ambiguity regarding which type of notice is being referenced without having to reference the actual Business and Professions Code section 485 statute.

- Add “listed in Section 869(b)(1)(B)” under subsection (a)(1) to identify the felony convictions to which the seven-year criteria in this subsection apply, specifically serious felonies, registerable sex offenses, and felony financial crimes that are directly and adversely related to the fiduciary qualifications, functions, or duties of a licensee or registrant.

This subsection contains existing provisions that CSLB has been applying when determining the reapplication date for denied applicants based on a felony conviction since it began fingerprinting in 2005. The Board is proposing to retain these criteria for

applicants with the more serious felonies as identified under Business and Professions Code section 480(a)(1)(A) and (B) and proposed Section 868.1 (felony financial crimes directly and adversely related to the profession) and for which the rehabilitation criteria are contained in proposed 16 CCR section 869(b)(1)(B).

Business and Professions Code section 486(a) sets forth the “earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision or in its notice,” unless the Board “prescribes an earlier date or a later date is prescribed by another statute.” Business and Professions Code section 7073 gives the Board authority to “develop criteria, similar to the criteria developed to evaluate rehabilitation, to establish the earliest date on which the applicant may reapply.”

To meet Section 7073’s statutory directive of developing “similar” criteria as used by CSLB for rehabilitation and for the reasons previously described above in justification of proposed Section 869(b)(1)(B), CSLB proposes retaining its current seven-year requirement for these types of felonies and distinguishing them from others in the regulatory amendments to this section. This proposed standard is similar to the standard contained in proposed Section 869(b)(1)(B) for applicants with these types of offenses.

These changes are necessary to permit the Registrar to take into consideration whether seven (7) years have passed from the time of release from incarceration or completion of probation and without occurrence of any additional substantially-related conduct that also could be grounds for denial. These types of felonies involve some of the most serious types of criminal offenses that could affect public protection, including rape, murder, grand theft, fraud, and crimes requiring sex offender registration under Penal Code section 290(d)(2) and (d)(3). As a result, CSLB has determined that these stricter requirements for setting a reapplication date should be considered for an applicant with these types of crimes.

- Add new subsection (a)(2) to address the reapplication date for applicants who have been convicted of a felony that is not covered under subsection (a)(1), above, mirroring the criteria in subsection (a)(1) except that the reapplication date for subsection (a)(2) is set at five (5) years.

As discussed above in relation to the rehabilitation criteria contained in 16 CCR section 869(b)(1)(B), with the passage of AB 2138, CSLB will be limited in its ability to consider felonies that were not considered exempt by the Legislature (i.e., “serious” felonies, registered sex offender crimes, and felony financial crimes that are addressed separately under Business and Professions Code section 480(a)(1)(A) and (B), effective July 1, 2020.)

Nevertheless, felonies are the most serious type of criminal offense. Felonies often involve serious physical harm (or threat of harm) to victims, but they also include offenses like white-collar crimes and fraud schemes. As a result, similar to the standard for these other felonies in proposed Section 869(b)(1)(A), CSLB has determined that the

timeline should be more than that expected from applicants who have misdemeanor convictions or other offenses, as discussed below. Therefore, the timeline should fall somewhere between the seven (7) years required for the more serious crimes listed in Section 869(b)(1)(B) and the three (3) years required for misdemeanors or other offenses referenced in re-numbered subsections (a)(3) and (a)(4). These changes are needed to help ensure an adequate track record of appropriate behavior before an earlier reapplication date should be permitted.

Timeline Contingent Upon Release from Incarceration or Probation and No Recurrence of Specified Misconduct

For the following reasons, CSLB proposes conditioning the five-year timeline on a factual demonstration that no misconduct that would be grounds for denial has occurred since the applicant's release from incarceration or probation if no incarceration was imposed. This is an existing standard in this section that the Board still believes is relevant to public protection and consideration of a showing of rehabilitation for these types of felonies, as well as for other crimes.

Behavioral change can be demonstrated through a consistent track record of appropriate behavior over a sufficiently extended period of time. That way, the Board and the public have some assurances that the person can practice their profession with safety to the public. Without this track record, public protection may be compromised.

Further, since this proposal would apply only in cases where the applicant was released from incarceration or probation, CSLB would not count time spent on probation or while incarcerated towards an applicant's rehabilitative efforts. As the courts have explained, persons "under the direct supervision of correctional authorities are required to behave in exemplary fashion..." As a result, little weight is generally placed on the fact that an individual did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Consequently, the Board believes that meeting the timelines in this section should always be contingent on making a factual showing of a consistent track record of appropriate behavior while outside the command of the criminal justice system, as well as proof that the individual has not re-offended. In other words, an applicant should be required to show that no additional criminal activity, professional misconduct, acts, or omissions that would be grounds for denial have occurred since release from incarceration or probation. These changes are necessary to ensure that CSLB meets its public protection and statutory mandates while implementing the public policy objectives of AB 2138.

- Renumber existing subsection (a)(2) to (a)(3) relating to misdemeanor convictions and amend the language, as discussed above under the "Amendments Throughout the Section" portion.

While this section relating to misdemeanor convictions is being reworded and restructured, the essential elements of this regulation remain the same and will not be

amended under this proposal, with the exception of newly-added provisions for “registrant,” “substantially-related” (moved to a different position), and the phrase “omissions that also could be grounds for denial, suspension, or revocation” based on language in Business and Professions Code section 7090, discussed above.

As discussed above, the existing reapplication criteria have been in existence since 2006 and function well to provide a balanced and thoughtful approach to analyzing rehabilitation and reapplication dates. The three-year timeline is also similar to the standard for rehabilitation in proposed Section 869(b)(1)(D), which allows CSLB to remain consistent in its approach to evaluating rehabilitation.

- Renumber existing subsection (a)(3) to (a)(4) relating to professional misconduct, relocate “acts,” add “omission(s),” and amend the language, as discussed above under the “Amendments Throughout the Section” portion.

Newly renumbered subsection (a)(4) relates to the reapplication date based on professional misconduct, acts, or omissions pursuant to Business and Professions Code sections 480 and 7090. While this subsection is being reworded and restructured, the essential elements of this subsection remain the same and will not be amended, with the exception of the addition of the following terms: (1) “registrant,” (2) “professional misconduct,” (3) “or for other acts or omissions that are grounds for denial,” (4) “or omission(s),” and (5) “omission(s) that also could be grounds for denial.”

Existing law, under Business and Professions Code section 480 authorizes the Board to deny an application for licensure based on an “act” that if done by a licensee would be grounds for suspension or revocation of the license. Effective July 1, 2020, AB 2138 removes that provision of Business and Professions Code section 480. However, the Board is still authorized to deny an application or discipline a license or registration on this basis pursuant to Business and Professions Code section 7090, which states that the Registrar may deny, suspend, or revoke any license or registration if the applicant, licensee, or registrant is “guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action.” As a result, these amendments are necessary to provide notice to affected applicants and more accurately reflect the Registrar’s authority to deny based upon “omissions,” as set forth in the Contractors State License Law.

Effective July 1, 2020, Business and Professions Code section 480(a)(2) will authorize the Board to deny a license on the basis that the applicant was subject to formal discipline by a licensing board located in or outside California for “professional misconduct” under specified conditions. Therefore, CSLB proposes adding “professional misconduct” to this section to accurately reflect a complete list of all relevant grounds for denial under CSLB’s jurisdiction.

As a result, the Board’s reapplication date criteria must also include consideration of rehabilitation evidence for all three of these other types of conduct, other than criminal

convictions, that may constitute grounds for denial to provide accurate notice of the Registrar's jurisdiction.

As discussed above, the existing reapplication date criteria provide a balanced and thoughtful approach to analyzing rehabilitation and reapplication dates. The three-year timeline is also similar to the standard for rehabilitation set forth in proposed Section 869(b)(1)(E), which allows CSLB to remain consistent in its approach to evaluating rehabilitation.

Existing subsections (a)(4) through (11) are being renumbered to (a)(5) through (11) and amended, as follows:

- Renumber existing subsection (a)(4) to (a)(5) relating to the nature and severity of the crimes or acts and amend the language to add “professional misconduct” and “or omission(s)” for the reasons discussed above and under the “Amendments Throughout the Section” portion.
- Renumber existing subsection (a)(5) to (a)(6) relating to subsequently-committed crimes or acts and amend the language to add “professional misconduct” and “or omission(s)” for the reasons discussed above and under the “Amendments Throughout the Section” portion.
- Renumber existing subsection (a)(6) to (a)(7) relating to the time that has elapsed since commission of the crimes or acts and amend the language to add “professional misconduct” and “or omission(s)” for the reasons discussed above and under the “Amendments Throughout the Section” portion.
- Renumber existing subsection (a)(7) to (a)(8) relating to applicant's compliance with terms of parole or probation, delete “or licensee” in this subsection due to inconsistency with the authorizing statute because this section only applies to setting the reapplication date for applicants under Business and Professions Code section 7073, and add language to clarify that the subsection applies only to probation or parole terms “in connection with the crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.”

This clarification will help avoid confusion for the regulated community by ensuring that the regulation contains a complete list of all grounds for denial and notice that consideration by the Registrar of these criteria will only be given if those parole or probation terms are connected to the crime, professional misconduct, act, or omission that is the ground for denial.

- Renumber existing subsection (a)(8) to (a)(9) relating to applicant's consistent work history after an offense, change “time of commission” of the offense to “date of commission,” and add language to clarify that the subsection applies to “crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.”

This clarification will help avoid confusion for the regulated community by ensuring that the regulation contains a complete list of all grounds for denial and

notice that the timeline for the work history evidence will be considered only if connected to a date *subsequent* to the date of commission of the crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.

- Renumber existing subsection (a)(9) to (a)(10) relating to documents or testimony about the applicant (character references), add the terms “professional misconduct” and “or omission(s),” change “time of commission” of the offense to “date of commission,” and add language to clarify that the subsection applies to offenses “that were the grounds for denial.”

This clarification helps avoid confusion for the regulated community by ensuring that the regulation contains a complete list of all grounds for denial and notice that the timeline for the character reference will only be considered if it is connected to a date *subsequent* to the date of commission of the crime(s), professional misconduct, act(s), or omission(s) that were the grounds for denial.

- See below for discussion on existing subsection (a)(10) that is being repealed.
- Amend subsection (a)(11) relating to other relevant evidence by deleting “or licensee” due to inconsistency with the authorizing statute at Business and Professions Code section 7073 and because this section only applies to setting reapplication dates for applicants, adding language to clarify that the subsection also applies to professional misconduct and omissions “that were the grounds for denial,” and amending the language for the reasons discussed above and under the “Amendments Throughout the Section” portion.

In addition, CSLB proposes adding the words “or diversion” before the word “program” to notify applicants that evidence of completion of a diversion program will be considered a factor in setting an earlier reapplication date. It has been CSLB’s experience that diversion programs are the more common rehabilitation programs used by criminal defendants, as well as respondents in administrative misconduct cases before state licensing boards. As a result, to more accurately describe the types of rehabilitation programs that applicants may use to make a showing of rehabilitation, CSLB proposes adding the words “or diversion” before the word “program.” Adding this specificity also helps avoid confusion for the regulated community and provides more opportunity to make a showing of rehabilitation to applicants who have a goal of obtaining an earlier reapplication date.

As with the criteria under 16 CCR section 869(a)(2) that may increase or decrease the amount of time needed to demonstrate rehabilitation, similar criteria are contained under existing subsections that are being renumbered to (a)(5) through (11) of 16 CCR section 869.9 in relation to consideration of the reapplication date.

These newly-renumbered subsections relate to criteria for increasing or decreasing the amount of time needed to make a showing of rehabilitation and thereby obtain an earlier reapplication date after the denial of a license or registration based on a criminal conviction, professional misconduct, acts, or omissions pursuant to Business and Professions Code sections 480 and 7090. While these subsections are being reworded

and restructured, the essential elements of them remain the same and will not be amended, with the exceptions noted above. Of note, the existing reapplication date criteria have been in existence since 2006 and function well to provide a thoughtful and well-balanced approach to analyzing the earliest date on which the applicant may reapply for licensure as a contractor or registration as a home improvement salesperson.

- Repeal existing subsection (a)(10) based on provisions of AB 2138 that remove the Board's ability to deny a license that involves a conviction that was expunged pursuant to Penal Code section 1203.4.

Effective July 1, 2020, Business and Professions Code section 480(c) will prohibit the Board from denying a license "on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement." If an applicant has had one of these dismissed convictions, it cannot be the grounds for denial of a license or registration. Therefore, these criteria are no longer needed in the information to consider when determining the earliest reapplication date because such a fact would not be relevant to a denial or to the reapplication date if the applicant was denied for another reason.

Amendments to Subsection (b):

The existing subsection (b) clarifies that nothing in this regulation precludes the Registrar from denying the license of an applicant who was previously denied a license and who is eligible for reapplication under this section. In addition to minor grammatical and/or punctuation revisions to existing language to improve comprehension, this proposal would amend subsection (b) by revising the language to add the terms "or registration" to this section. As discussed above under the "Amendments Throughout the Section" portion, these changes are needed to provide accurate notice to the regulated community and to reflect that CSLB regulates both contractor licensees and home improvement salesperson registrants. No other substantive changes would be needed for this existing language.

Amendment to Note Portion:

This proposal would add a section of law to the Note portion of the regulation, as follows:

- Add a new reference to the Reference citation for Business and Professions Code section 485.

Since the Board is required to notify an applicant that their application is denied pursuant to Business and Professions Code section 485 and that notice would contain the earliest reapplication date, the Board proposes adding that section of the Business and Professions Code to the Notes section of this regulation to comply with the "Reference" standard in the Administrative Procedure Act.

B. Underlying Data

CSLB relies upon the following technical, theoretical, or empirical studies, reports, and/or documents for this proposal:

- Excerpt from CSLB December 13, 2018, Board Meeting Minutes (pages 45 and 50–51 of the March 21, 2019, Board Meeting packet);
- Excerpt from CSLB March 21, 2019, Board Meeting Minutes (pages 263 and 282-286 of the June 6-7, 2019, Board Meeting packet);
- Excerpt from CSLB September 24, 2019, Board Meeting Minutes (pages 185-186 and 207-208 of the December 12, 2019, Board Meeting packet);
- Criminal Background Unit Statistics from March 21, 2019, Board Meeting;
- Historical Financial Crime Convictions Resulting in CSLB's Denial of Licensure (FY 2013/14 through FY 2017/18) Table;
- Assembly Bill 2138, as amended in Assembly April 2, 2018;
- Assembly Bill 2138, as amended in Senate June 20, 2018;
- Assembly Bill 2138, Chapter 995, Statutes of 2018;
- Senate Committee on Business, Professions and Economic Development Analysis, dated June 18, 2018; and
- Assembly Floor Analysis dated August 24, 2018.

C. Business Impact

This regulation will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

The Board has approximately 249,285 active licensees and registrants as of April 2, 2019. In the most recent five-year period, CSLB fingerprinted approximately 147,454 individuals. Of those, approximately 20% (30,007) had at least one conviction of some kind. Of those, only 262 individuals were denied a license or registration – that is less than one-fifth of one percent (0.0018 or 0.18%) of all of the applicants who fingerprinted for CSLB during that time period and less than one percent (0.0087 or 0.87%) of applicants with a criminal conviction of some kind during that time period. If there was an economic impact of the denial of those applications that was measurable, it would be negligible given the small number of individuals impacted compared to the whole. Therefore, since the Board has denied significantly less than one percent (1%) of all applicants and since these changes to the law will result in even less denials than before, this proposal will not have a significant, statewide adverse economic impact.

AB 2138 was enacted to reduce licensing and employment barriers for people who have been convicted of a crime, or due to acts underlying the conviction, who have obtained a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation,

or whose conviction was dismissed or expunged. These amendments will further assist in this effort through the adoption of standards designed to implement new substantial relationship criteria, adversely and directly related criteria, rehabilitation criteria, and reapplication date criteria. In addition, one of the author's stated purposes of AB 2138 was to reverse any "chilling" effect on applicants who may never apply due to apprehension about their criminal background. As a result, it is anticipated that there may be fewer denials or disciplinary actions based upon criminal convictions and possibly even an increase in the number of acceptable applications and, therefore, no significant or statewide adverse economic impacts.

D. Economic Impact Assessment

This regulatory proposal will have the following effects:

- It may result in the creation of new jobs within the state of California because it implements AB 2138, which is legislation designed to reduce licensing and employment barriers for people who have been convicted of a crime who have obtained a certificate of rehabilitation, were granted clemency, made a showing of rehabilitation, or whose conviction was dismissed or expunged. This proposal will amend regulations to add new substantial relationship criteria, adversely and directly related criteria, rehabilitation criteria, and reapplication date criteria that emphasize an applicant's, licensee's, or registrant's rehabilitative efforts, which may result in having fewer license or registration denials or disciplinary actions based on substantially-related crimes, professional misconduct, acts, or omissions. It may also increase the number of applications by reversing a potential chilling effect on an unknown number of applicants. However, the Board does not have data to project the number of jobs that may be created as a result of these efforts.
- It may have an impact on businesses within California, specifically licensed contractors and registered home improvement salespersons, to the extent that more individual applicants may be able to be licensed or registered under the proposal. It may also create new businesses within the State of California, but the number will be insignificant because the proposal is not of sufficient magnitude and does not affect a large enough population to create a significant number of businesses. It will not eliminate businesses within California. Historically, similar regulations adopted by the Board resulted in significantly less than one percent (1%) of all applicants being denied a license or registration. Even assuming that the number of denials or discipline would decrease as a result of these amendments, the Board believes that this data demonstrates that these amendments will not be significant enough to create or eliminate a significant number of contracting businesses or businesses that hire home improvement salespersons. CSLB estimates approximately 19 additional applicants will be granted licensure per year as a result of the proposed regulations and will be required to pay the \$200 initial license fee and the ongoing biennial renewal fee of \$450 for an active license.

- It will also not affect the expansion of businesses currently doing business within the State of California because the proposal is not of sufficient magnitude and does not affect a large enough population to expand businesses. Historically, similar regulations adopted by the Board resulted in significantly less than one percent (1%) of all applicants being denied a license or registration. Even assuming that the number of denials or discipline would decrease as a result of these amendments, the Board believes that this data demonstrates that it will not be significant enough to expand contracting businesses or business that hire home improvement salespersons. CSLB estimates approximately 19 additional applicants will be granted licensure per year as a result of the proposed regulations and will be required to pay the \$200 initial license fee and the ongoing biennial renewal fee of \$450 for an active license.
- It will benefit the health and welfare of California residents because, by implementing criteria that emphasize rehabilitative efforts, it will create an opportunity for employment for people who have been convicted of a crime and are able to make a showing of rehabilitation. This may lead to an increase in licensed contractors and registered home improvement salespersons in the marketplace, thereby allowing California consumers access to more licensed and registered construction professionals.
- It will not affect worker safety because the proposal does not relate to worker safety.
- It will not affect the State's environment because the proposal does not relate to environmental issues.
- It may have an indirect effect upon housing because contractors and home improvement salespersons work in the housing industry, but this will be statistically minimal, unquantifiable, and therefore negligible. Thus, housing costs are not considered directly affected.

E. Requirements for Specific Technologies or Equipment

These regulations do not mandate the use of specific technologies or equipment.

F. Consideration of Alternatives

No reasonable alternative to this regulatory proposal would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Set forth below are the alternatives that were considered and the reasons each alternative was rejected or selected:

1. CSLB considered the possibility of not revising these regulations. This alternative was rejected because the Board needs to define how to consider the denial of a

license when an applicant has been convicted of a crime, professional misconduct, act, or omission or if the crime, professional misconduct, act, or omission is substantially related to the qualifications, functions, or duties of the contracting or home improvement salesperson profession in light of recent legislative amendments. AB 2138 requires the Board to include new substantial relationship criteria and new directly and adversely related criteria, consider how to evaluate a showing of rehabilitation for an applicant or licensee, and consider how to determine the earliest reapplication date for denied applicants, which are not currently addressed in Board regulations in a manner consistent with the changes made in AB 2138.

2. CSLB considered amending the regulations. This option was selected, and all other options were rejected. The Board determined that amending 16 CCR sections 868, 869, 869.5, and 869.9 and adopting 16 CCR section 868.1 would allow the Board to set criteria for how to consistently process the denial of a license when an applicant has been convicted of a crime, professional misconduct, act, or omission or if the crime, professional misconduct, act, or omission is substantially related to the qualifications, functions, or duties of the contracting or home improvement salesperson profession in light of recent legislative amendments. AB 2138 requires the Board to include new substantial relationship criteria and new directly and adversely related criteria, consider how to evaluate a showing of rehabilitation for an applicant or licensee, and consider how to determine the earliest reapplication date for denied applicants, which are not currently addressed in Board regulations in a manner consistent with the changes made in AB 2138.
3. In addition, the Board explored options for evaluating whether an applicant or licensee has made a showing of rehabilitation. The Board considered two options for how to evaluate whether an applicant, licensee, or registrant made a showing of rehabilitation under 16 CCR section 869 when an applicant, licensee, or registrant has been convicted of a crime and successfully completed parole or probation without a violation. The first option (Option 1) permitted the Board to evaluate an individual applicant's rehabilitative efforts using five (5) criteria designed to examine whether the applicant's, licensee's, or registrant's parole or probation was of sufficient duration and magnitude to address the possibility of recurrence of the misconduct. The second option (Option 2) would create a presumption that an applicant, licensee, or registrant was rehabilitated if the individual simply completed parole or probation without a violation and would provide a simplified approach to analyzing convictions. In consideration of the vulnerability of construction consumers that contractors and home improvement salespersons serve, the Board rejected Option 2 and elected to use greater discretion and resources to evaluate rehabilitative efforts using Option 1.