

**Assembly Bill No. 3063**

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Passed the Assembly August 18, 2008

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*Chief Clerk of the Assembly*

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Passed the Senate August 14, 2008

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 432.7 of the Labor Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

AB 3063, Committee on Labor and Employment. Employment: criminal history.

Existing law provides that an employer may not ask an applicant for employment to disclose, and an employer may not utilize in an employment-related decision, information concerning an arrest or detention that did not result in a conviction or information concerning participation in a pretrial or posttrial diversion program.

This bill, in addition, would prohibit an employer from asking an applicant for employment to disclose, or utilizing in an employment-related decision, information concerning a criminal conviction the record of which has been judicially ordered sealed, expunged, or statutorily eradicated, or information concerning a misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed.

This bill would provide exceptions to the prohibition on asking applicants about a criminal conviction or entry into a pretrial diversion or similar program, if state or federal law requires an employer to obtain information regarding an applicant's criminal convictions, requires the applicant to possess or use a firearm in the position applied for, prohibits an individual convicted of a crime from holding the position applied for, or prohibits the employer from hiring an applicant who has been convicted of a crime. The bill would further provide that specified provisions of the Labor Code shall not be construed to prohibit a credit union employer from complying with the Federal Credit Union Act or the California Credit Union Law.

Existing law makes an intentional violation of these provisions a misdemeanor and subjects offenders to criminal penalties.

This bill would impose a state-mandated local program by creating additional crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is the intent of the Legislature to codify certain regulations of the Fair Employment and Housing Commission and that the amendments to existing provisions set forth in the bill are declaratory of existing law.

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

SECTION 1. Section 432.7 of the Labor Code is amended to read:

432.7. (a) Except as otherwise provided by law, an employer, whether a public agency, private individual, or corporation, shall not ask an applicant for employment to disclose, in writing or verbally, information concerning an arrest or detention that did not result in a conviction, information concerning a referral to, and participation in, any pretrial or posttrial diversion program, information concerning a conviction the record of which has been judicially ordered sealed, expunged, or statutorily eradicated, or information concerning a misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed pursuant to Section 1203.4 of the Penal Code, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, any record concerning a conviction the record of which has been judicially ordered sealed, expunged, or statutorily eradicated, or any record concerning a misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed pursuant to Section 1203.4 of the Penal Code. As used in this section, a conviction includes a plea, verdict, or finding of guilt, regardless of whether

a sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(b) This section does not prohibit the disclosure of the information authorized for release under Sections 13203 and 13300 of the Penal Code, to a government agency employing a peace officer. However, the employer shall not determine any condition of employment other than paid administrative leave based solely on an arrest report. The information contained in an arrest report may be used as the starting point for an independent, internal investigation of a peace officer in accordance with Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.

(c) If a person violates this section or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the aggrieved applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(d) The remedies under this section are in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.

(e) This section does not apply to a person seeking employment or already employed as a peace officer, or a person seeking employment for a position in the Department of Justice or other criminal justice agencies as defined in Section 13101 of the Penal Code.

(f) This section does not prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

(1) With regard to an applicant for a position with regular access to patients, to disclose an arrest under a section specified in Section 290 of the Penal Code.

(2) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under a section specified in Section 11590 of the Health and Safety Code.

(g) (1) A peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall not knowingly disclose, with the intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral and participation in a pretrial or posttrial diversion program, to a person not authorized by law to receive that information.

(2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or a proceeding that did not result in a conviction, including information pertaining to a referral to and participation in a pretrial or posttrial diversion program, to a person not authorized by law to receive that information.

(3) Except for those persons specifically referred to in Section 1070 of the Evidence Code, a person who knows that he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to and participation in a pretrial or posttrial diversion program, shall not receive or possess that information.

(h) "A person authorized by law to receive that information," for purposes of this section, means a person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by a local law enforcement criminal justice agency, and includes those persons identified in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by that employment to receive, analyze, or process criminal offender record information.

(i) This section does not require the Department of Justice to remove entries relating to an arrest or detention not resulting in

conviction from summary criminal history records forwarded to an employer pursuant to law.

(j) As used in this section, “pretrial or posttrial diversion program” means a program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.

(k) (1) Subdivision (a) does not apply to a city, city and county, county, or district, or an officer or official thereof, in screening a prospective concessionaire, or the affiliates and associates of a prospective concessionaire for purposes of consenting to or approving the prospective concessionaire’s application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

(2) For purposes of this subdivision, the following terms have the following meanings:

(A) “Screening” means a written request for criminal history information made to a local law enforcement agency.

(B) “Prospective concessionaire” means an individual, general or limited partnership, corporation, trust, association, or other entity that is applying for, or seeking to obtain, a public agency’s consent to, or approval of, the acquisition by that individual or entity of any beneficial ownership interest in any public agency’s concession, lease, or other property right, whether directly or indirectly held. However, “prospective concessionaire” does not include the following:

(i) A lender acquiring an interest solely as security for a bona fide loan made in the ordinary course of the lender’s business and not made for the purpose of acquisition.

(ii) A lender upon foreclosure or assignment in lieu of foreclosure of the lender’s security.

(C) “Affiliate” means an individual or entity that controls, or is controlled by, the prospective concessionaire, or who is under common control with the prospective concessionaire.

(D) “Associate” means an individual or entity that shares a common business purpose with the prospective concessionaire with respect to the beneficial ownership interest that is subject to the consent or approval of the city, county, city and county, or district.

(E) “Control” means the possession, direct or indirect, of the power to direct, or cause the direction of, the management or policies of the controlled individual or entity.

(I) (1) Subdivision (a) does not prohibit a public agency, or an officer or official thereof, from denying consent to, or approval of, a prospective concessionaire’s application for, or acquisition of, a beneficial interest in a concession, lease, or other property interest based on the criminal history information of the prospective concessionaire or the affiliates or associates of the prospective concessionaire that show a criminal conviction for offenses involving moral turpitude. Criminal history information for purposes of this subdivision includes criminal history information obtained pursuant to Section 11105 or 13300 of the Penal Code.

(2) In considering criminal history information, a public agency shall consider the crime for which the prospective concessionaire or the affiliates or associates of the prospective concessionaire was convicted only if that crime relates to the specific business that is proposed to be conducted by the prospective concessionaire.

(3) A prospective concessionaire whose application for consent or approval to acquire a beneficial interest in a concession, lease, or other property interest is denied based on criminal history information shall be provided a written statement of the reason for the denial.

(4) (A) If the prospective concessionaire submits a written request to the public agency within 10 days of the date of the notice of denial, the public agency shall review its decision with regard to any corrected record or other evidence presented by the prospective concessionaire as to the accuracy or incompleteness of the criminal history information utilized by the public agency in making its original decision.

(B) The prospective concessionaire shall submit the copy or the corrected record of any other evidence to the public agency within 90 days of a request for review. The public agency shall render its decision within 20 days of the submission of evidence by the prospective concessionaire.

(m) Subdivision (a) does not prohibit an employer, including a local agency, from asking an applicant about a criminal conviction or seeking from any source information regarding a criminal conviction of, or entry into a pretrial diversion or similar program by, the applicant if, pursuant to Section 1829 of Title 12 of the

United States Code or any other state or federal law, any of the following apply:

(1) The employer is required to obtain information regarding a conviction of an applicant.

(2) The applicant would be required to possess or use a firearm in the course of his or her employment.

(3) An individual who has been convicted of a crime is prohibited from holding the position sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated, or judicially dismissed following probation.

(4) The employer is prohibited from hiring an applicant who has been convicted of a crime.

(n) Subdivision (a) shall not be construed to prohibit a credit union employer from complying with its statutory obligations under the Federal Credit Union Act (12 U.S.C. Sec. 1751 et seq.) or the California Credit Union Law (Division 5 (commencing with Section 14000) of the Financial Code).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. It is the intent of the Legislature to codify subdivision (d) of Section 7287.4 of Title 2 of the California Code of Regulations. The Legislature finds and declares that the amendments to Section 432.7 of the Labor Code set forth in this measure are declaratory of existing law.















Approved \_\_\_\_\_, 2008

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*Governor*