

ASSEMBLY BILL

No. 389

Introduced by Assembly Member Williams

February 15, 2013

An act to amend Section 44237 of the Education Code, relating to private schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 389, as introduced, Williams. Private schools: employees.

Existing law requires every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level to require each applicant for employment in a position requiring contact with minor pupils who does not possess a valid California state teaching credential, or is not currently licensed by another state agency that requires a criminal record summary, to submit 2 sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation.

This bill would delete the exemption for applicants possessing a valid California state teaching credential or who are currently licensed by another state agency that requires a criminal record summary, from submitting 2 sets of fingerprints for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. The bill also would make technical, nonsubstantive changes.

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

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

1 SECTION 1. Section 44237 of the Education Code is amended
2 to read:

3 44237. (a) Every person, firm, association, partnership, or
4 corporation offering or conducting private school instruction on
5 the elementary or high school level shall require each applicant
6 for employment in a position requiring contact with minor pupils
7 ~~that directly relates to services provided in a facility described in~~
8 ~~this section and has background clearance criteria that meets or~~
9 ~~exceeds the requirements of this section, who does not possess a~~
10 ~~valid credential issued by the commission or is not currently~~
11 ~~licensed by another state agency that requires a criminal record~~
12 ~~summary to submit two sets of fingerprints prepared for submittal~~
13 by the employer to the Department of Justice for the purpose of
14 obtaining criminal record summary information from the
15 Department of Justice and the Federal Bureau of Investigation.

16 (b) (1) As used in this section, “employer” means every person,
17 firm, association, partnership, or corporation offering or conducting
18 private school instruction on the elementary or high school level.

19 (2) As use in this section, “employment” means the act of
20 engaging the services of a person, who will have contact with
21 pupils, to work in a position at a private school at the elementary
22 or high school level on or after September 30, 1997, on a regular,
23 paid full-time basis, regular, paid part-time basis, or paid ~~full-~~
24 *full-time* or part-time seasonal basis.

25 (3) As used in this section, “applicant” means any person who
26 is seriously being considered for employment by an employer.

27 (4) This section does not apply to a secondary school pupil
28 working at the school he or she attends or a parent or legal guardian
29 working exclusively with his or her children.

30 (c) (1) Upon receiving the identification cards, the Department
31 of Justice shall ascertain whether the applicant has been arrested
32 or convicted of any crime insofar as that fact can be ascertained
33 from information available to the Department of Justice and
34 forward the information to the employer submitting the fingerprints
35 no more than 15 working days after receiving the identification
36 cards. The Department of Justice shall not forward information
37 regarding criminal proceedings that did not result in a conviction
38 but shall forward information on arrests pending adjudication.

1 (2) Upon implementation of an electronic fingerprinting system
2 with terminals located statewide and managed by the Department
3 of Justice, the Department of Justice shall ascertain the information
4 required pursuant to this subdivision within three working days.
5 If the Department of Justice cannot ascertain the information
6 required pursuant to this subdivision within three working days,
7 the Department of Justice shall notify the employer submitting the
8 fingerprints that it cannot so ascertain the required information.
9 This notification shall be delivered by telephone or email to the
10 employer submitting the fingerprints. If the employer submitting
11 the fingerprints is notified by the Department of Justice that it
12 cannot ascertain the required information about a person, the
13 employer shall not employ that person until the Department of
14 Justice ascertains that information.

15 (3) The Department of Justice shall review the criminal record
16 summary it obtains from the Federal Bureau of Investigation to
17 ascertain whether an applicant for employment has a conviction,
18 or an arrest pending final adjudication, for any sex offense,
19 controlled substance offense, crime of violence, or serious or
20 violent felony. The Department of Justice shall provide written
21 notification to the private school employer only as to whether an
22 applicant for employment has any convictions, or arrests pending
23 final adjudication, for any of these crimes.

24 (d) An employer shall not employ a person until the Department
25 of Justice completes its check of the state criminal history file as
26 set forth in this section.

27 (e) (1) An employer shall not employ a person who has been
28 convicted of a violent or serious felony or a person who would be
29 prohibited from employment by a public school district pursuant
30 to any provision of this code because of his or her conviction for
31 any crime.

32 (2) A person who would be prohibited from employment by a
33 private school pursuant to paragraph (1) may not, on or after July
34 1, 1999, own or operate a private school offering instruction on
35 the elementary or high school level.

36 (f) An employer shall request subsequent arrest service from
37 the Department of Justice as provided under Section 11105.2 of
38 the Penal Code.

1 (g) This section applies to any violent or serious offense ~~which~~
2 *that*, if committed in this state, would have been punishable as a
3 violent or serious felony.

4 (h) For purposes of this section, a violent felony is any felony
5 listed in subdivision (c) of Section 667.5 of the Penal Code and a
6 serious felony is any felony listed in subdivision (c) of Section
7 1192.7 of the Penal Code.

8 (i) Notwithstanding subdivision (e), a person shall not be denied
9 employment or terminated from employment solely on the basis
10 that the person has been convicted of a violent or serious felony
11 if the person has obtained a certificate of rehabilitation and pardon
12 pursuant to Chapter 3.5 (commencing with Section 4852.01) of
13 Title 6 of Part 3 of the Penal Code.

14 (j) Notwithstanding subdivision (e), a person shall not be denied
15 employment or terminated from employment solely on the basis
16 that the person has been convicted of a serious felony that is not
17 also a violent felony if that person can prove to the sentencing
18 court of the offense in question, by clear and convincing evidence,
19 that he or she has been rehabilitated for the purposes of school
20 employment for at least one year. If the offense in question
21 occurred outside this state, then the person may seek a finding of
22 rehabilitation from the court in the county in which he or she is a
23 resident.

24 (k) The commission shall make available to each private school
25 a listing of all credentialholders who have had final adverse action
26 taken against their credential. The information shall be identical
27 to that made available to public schools in the state. The
28 commission shall also send on a quarterly basis a complete and
29 updated list of all teachers who have had their teaching credentials
30 revoked or suspended, excluding teachers who have had their
31 credentials reinstated, or who are deceased.

32 (l) The Department of Justice may charge a reasonable fee to
33 cover costs associated with the processing, reviewing, and
34 supplying of the criminal record summary as required by this
35 section. The fee shall not exceed the actual costs incurred by the
36 Department of Justice.

37 (m) Where reasonable access to the statewide electronic
38 fingerprinting network is available, the Department of Justice may
39 mandate electronic submission of the fingerprints and related
40 information required by this section.

1 (n) All information obtained from the Department of Justice is
2 confidential. Agencies handling Department of Justice information
3 shall ensure the following:

4 (1) A recipient shall not disclose its contents or provide copies
5 of information.

6 (2) Information received shall be stored in a locked file separate
7 from other files, and shall only be accessible to the custodian of
8 records.

9 (3) Information received shall be destroyed upon the hiring
10 determination in accordance with subdivision (a) of Section 708
11 of Title 11 of the California Code of Regulations.

12 (4) Compliance with destruction, storage, dissemination,
13 auditing, backgrounding, and training requirements as set forth in
14 Sections 700 to 708, inclusive, of Title 11 of the California Code
15 of Regulations and Section 11077 of the Penal Code governing
16 the use and security of criminal offender record information is the
17 responsibility of the entity receiving the information from the
18 Department of Justice.

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