

AMENDED IN ASSEMBLY JUNE 11, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1428**

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**Introduced by Assembly Member Conway  
(Coauthors: Assembly Members Bigelow, Dahle, Hagman, Harkey,  
Morrell, Patterson, Wagner, Waldron, and Wilk)**

April 30, 2013

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An act to add Section ~~100523~~ *1043* to the Government Code, relating to health care coverage, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1428, as amended, Conway. California Health Benefit Exchange: employees and contractors.

Under the federal Patient Protection and Affordable Care Act (PPACA), each state is required, by January 1, 2014, to establish an American Health Benefit Exchange that makes available qualified health plans to qualified individuals and small employers. Existing state law establishes the California Health Benefit Exchange (Exchange) within state government, specifies the powers and duties of the board governing the Exchange, and requires the board to facilitate the purchase of qualified health plans through the Exchange by qualified individuals and small employers by January 1, 2014. Existing law requires the board to employ necessary staff and authorizes the board to enter into contracts.

~~This bill would require all employees, prospective employees, contractors, subcontractors, and vendors, who facilitate enrollment of persons in a qualified health plan in the Exchange and who, in the course and scope of their employment, have access to the financial or medical~~

~~information of enrollees or potential enrollees, to be fingerprinted, at appropriate locations determined by the board, for the purpose of obtaining criminal history information. The bill would prohibit a person who has been convicted of felony crimes of dishonesty or breach of trust in a state or federal jurisdiction or other specified crimes from being hired by or contracting with the Exchange for the purpose of facilitating enrollment of persons in a qualified health plan in the Exchange or for any position where, in the course and scope of his or her employment, he or she will have access to the financial or medical information of enrollees or potential enrollees of the Exchange. The bill would also require an applicant to notify the Exchange of any prescribed misdemeanor or felony convictions, filing of charges, or administrative actions.~~

*This bill would require the board, consistent with specified federal standards, to submit to the Department of Justice fingerprint images and related information of all employees, prospective employees, contractors, subcontractors, volunteers, or vendors, whose duties include or would include access to specified information, for the purposes of obtaining prescribed criminal history information. The bill would require the board to require any services contract, interagency agreement, or public entity agreement that includes or would include access to the specified information to include a provision requiring the contractor to agree to criminal background checks on its employees, contractors, agents, or subcontractors who will have access to that information as part of their services contract, interagency agreement, or public entity agreement. The bill would require the department to forward to the Federal Bureau of Investigation (FBI) requests for federal summary criminal history information, and would require the department to review the information returned from the FBI and compile and disseminate a response to the board. The bill would require the department to charge a fee sufficient to cover the costs of processing requests pursuant to the bill.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1     *SECTION 1. Section 1043 is added to the Government Code,*  
2 *to read:*

3     1043. (a) (1) *The executive board of the California Health*  
4 *Benefit Exchange, as established by Section 100500, shall,*  
5 *consistent with the Centers for Medicare and Medicaid Services*  
6 *(CMS), Catalog of Minimum Acceptable Risk Standards for*  
7 *Exchanges (MARS-E), Exchange Reference Architecture*  
8 *Supplement version 1.0, issued on August 12, 2012, or further*  
9 *updates, guidance, or regulations, submit to the Department of*  
10 *Justice fingerprint images and related information required by the*  
11 *Department of Justice of all employees, prospective employees,*  
12 *contractors, subcontractors, volunteers, or vendors whose duties*  
13 *include or would include access to any information contained in*  
14 *the information systems and devices of the Exchange, including,*  
15 *but not limited to, confidential information, personal identifying*  
16 *information, personal health information, federal tax information,*  
17 *or financial information, or for the purposes of obtaining*  
18 *information as to the existence and content of a record of state or*  
19 *federal convictions and also information as to the existence and*  
20 *content of a record of state or federal arrests for which the*  
21 *Department of Justice establishes that the person is free on bail*  
22 *or on his or her recognizance pending trial or appeal.*

23     (2) *The board shall require any services contract, interagency*  
24 *agreement, or public entity agreement that includes or would*  
25 *include access to information described in paragraph (1), and*  
26 *entered into, renewed, or amended on or after the effective date*  
27 *of this section, to include a provision requiring the contractor to*  
28 *agree to criminal background checks on its employees, contractors,*  
29 *agents, or subcontractors who will have access to information*  
30 *described in paragraph (1) as part of their services contract,*  
31 *interagency agreement, or public entity agreement with the board.*

32     (b) *The Department of Justice shall forward to the Federal*  
33 *Bureau of Investigation requests for federal summary criminal*  
34 *history information received pursuant to paragraph (1) of*  
35 *subdivision (a). The Department of Justice shall review the*  
36 *information returned from the Federal Bureau of Investigation*  
37 *and compile and disseminate a response to the board.*

1 (c) *The Department of Justice shall provide a state or federal*  
 2 *level response to the board pursuant to subdivision (p) of Section*  
 3 *11105 of the Penal Code.*

4 (d) *The board shall request from the Department of Justice*  
 5 *subsequent notification service, as provided pursuant to Section*  
 6 *11105.2 of the Penal Code, for persons listed in paragraph (1) of*  
 7 *subdivision (a).*

8 (e) *The Department of Justice shall charge a fee sufficient to*  
 9 *cover the cost of processing requests pursuant to this section.*

10 SECTION 1. ~~The Legislature finds and declares all of the~~  
 11 ~~following:~~

12 ~~(a) The mission of the California Health Benefit Exchange~~  
 13 ~~(Exchange) is to increase the number of insured Californians.~~

14 ~~(b) According to the Exchange, the Assisters Program is~~  
 15 ~~designed to target populations in California’s vast, geographically~~  
 16 ~~diverse mix of rural and urban communities, estimated at 4,000,000~~  
 17 ~~eligible individuals: one hundred thousand in northern California~~  
 18 ~~and Sierra counties, 130,000 in the Sacramento area, 390,000 in~~  
 19 ~~the greater Bay Area, 250,000 in the San Joaquin Valley, 140,000~~  
 20 ~~in the central coast, 780,000 in Los Angeles, and another 750,000~~  
 21 ~~in southern California.~~

22 ~~(c) According to the Exchange, the Assisters Program is~~  
 23 ~~designed to target populations within the estimated 4,000,000~~  
 24 ~~eligible individuals that are ethnically diverse: 1,880,000 estimated~~  
 25 ~~to be Hispanic, 1,340,000 Caucasian, 470,000 Asian, and 210,000~~  
 26 ~~African American.~~

27 ~~(d) According to the Exchange, the Assisters Program will~~  
 28 ~~conduct outreach, education, marketing, and enrollment for the~~  
 29 ~~Exchange to reach the estimated 4,000,000 eligible individuals.~~

30 ~~(e) The Assisters Program is expected to promote maximum~~  
 31 ~~enrollment of individuals into coverage and ensure that assisters~~  
 32 ~~are knowledgeable of both subsidized and nonsubsidized health~~  
 33 ~~care coverage and qualified health plans and are equipped with~~  
 34 ~~the information and expertise needed to successfully enroll~~  
 35 ~~individuals into coverage.~~

36 ~~(f) The Exchange will use individual assisters, in-person~~  
 37 ~~assisters, and navigators in the Assisters Program to accomplish~~  
 38 ~~these goals.~~

39 ~~(g) Individual assisters, in-person assisters, and navigators will,~~  
 40 ~~necessarily, have access to eligible individuals’ personal identifying~~

1 information, including social security numbers, personal health  
2 information, and state and federal tax information, to enroll over  
3 4,000,000 Californians in health insurance programs.

4 (h) Agents and brokers, health insurers, and other entities that  
5 currently handle applications for health care coverage and the  
6 applicant's sensitive, personal information are required to be  
7 licensed by the Department of Insurance.

8 (i) The Department of Insurance, by law, is authorized to require  
9 applicants for licensure to pass background checks, including  
10 fingerprinting, as a condition of licensure.

11 (j) It is in the public's interest that eligible individuals  
12 purchasing health care coverage through the services of an  
13 individual assister, in-person assister, or navigator have the same  
14 reasonable expectation of privacy protections afforded to  
15 Californians purchasing health care coverage through a private  
16 agent or broker.

17 (k) To advance the public's interest in protecting and  
18 safeguarding eligible individuals from the unauthorized and illegal  
19 access to, or disclosure of, their personal identifying information,  
20 personal health information, or federal tax information when the  
21 Exchange begins enrolling customers into health care plans for  
22 coverage beginning as early as January 1, 2014.

23 SEC. 2. Section 100523 is added to the Government Code, to  
24 read:

25 100523. (a) The board shall require all employees, prospective  
26 employees, contractors, subcontractors, and vendors, who facilitate  
27 enrollment of persons in a qualified health plan in the Exchange  
28 and who, in the course and scope of their employment, have access  
29 to the financial or medical information of enrollees or potential  
30 enrollees of the Exchange, to be fingerprinted, at appropriate  
31 locations determined by the board, for the purpose of obtaining  
32 criminal history information.

33 (b) A person who has been convicted of any felony crimes of  
34 dishonesty or breach of trust in a state or federal jurisdiction, who  
35 has been convicted of any violation of Section 1033 of Title 18 of  
36 the United States Code, or who has been convicted of any crime  
37 included in Section 2183.2 of Title 10 of the California Code of  
38 Regulations shall not be hired by or contract with the Exchange  
39 for the purpose of facilitating enrollment of persons in a qualified  
40 health plan in the Exchange or for any position where, in the course

1 and scope of his or her employment, he or she will have access to  
2 the financial or medical information of enrollees or potential  
3 enrollees of the Exchange.

4 (e) A person who has applied for employment with the Exchange  
5 for any position where, in the course and scope of his or her  
6 employment, he or she will have access to the financial or medical  
7 information of enrollees or potential enrollees of the Exchange  
8 shall immediately notify the Exchange upon any misdemeanor or  
9 felony conviction, any filing of felony charges in state or federal  
10 court, any administrative action regarding a professional or  
11 occupational license, or any conviction listed in subdivision (b),  
12 if the action occurs after an application has been submitted.

13 ~~SEC. 3.~~

14 *SEC. 2.* This act is an urgency statute necessary for the  
15 immediate preservation of the public peace, health, or safety within  
16 the meaning of Article IV of the Constitution and shall go into  
17 immediate effect. The facts constituting the necessity are:

18 In order to protect and safeguard customers from the  
19 unauthorized and illegal access to, or disclosure of, their personal  
20 identifying information, personal health information, or federal  
21 tax information when the California Health Benefit Exchange  
22 begins enrolling customers into health care plans for coverage  
23 beginning as early as January 1, 2014, it is necessary that this act  
24 take effect immediately.