

**Senate Bill No. 530**

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Passed the Senate September 6, 2013

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*Secretary of the Senate*

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Passed the Assembly September 4, 2013

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013, 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, and to add Section 4852.22 to the Penal Code, relating to criminal offenders.

## LEGISLATIVE COUNSEL'S DIGEST

SB 530, Wright. Criminal offenders: rehabilitation.

Existing law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or posttrial diversion program, except as specified. Existing law makes it a crime to intentionally violate these provisions.

This bill would additionally prohibit an employer, as specified, from asking an applicant to disclose, or from utilizing as a factor in determining any condition of employment, information concerning a conviction that has been judicially dismissed or ordered sealed, as provided, unless the employer is required by law to obtain that information, the applicant would be required to possess or use a firearm in the course of his or her employment, an individual who has been convicted of a crime is prohibited by law 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, or if the employer is prohibited by law from hiring an applicant who has been convicted of a crime. Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

Existing law authorizes an individual convicted of a felony or convicted of a misdemeanor violation of a sex offense, as specified, to file a petition for a certificate of rehabilitation and a pardon provided that certain conditions have been satisfied. Existing law authorizes, after the minimum period of rehabilitation has expired, an individual, as specified, to file a petition for ascertainment and declaration of rehabilitation. Existing law authorizes a court to grant an order known as a certificate of rehabilitation and

recommend that the Governor grant a full pardon to certain individuals.

This bill would authorize a trial court hearing an application for a certificate of rehabilitation before the applicable period of rehabilitation has elapsed to grant the application if the court, in its discretion, believes relief serves the interests of justice.

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.

*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) No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1 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, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1 of the Penal Code. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether 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) Nothing in this section shall 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) In any case where 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 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 shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.

(e) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies as defined in Section 13101 of the Penal Code are not covered by this section.

(f) Nothing in this section shall 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 any 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 any section specified in Section 11590 of the Health and Safety Code.

(g) (1) No 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 knowingly disclose, with 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 to, and participation in, any pretrial or posttrial diversion program, to any 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 proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing 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, any pretrial or posttrial diversion program, shall receive or possess that information.

(h) "A person authorized by law to receive that information," for purposes of this section, means any 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, but is not limited to, those persons set forth 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) Nothing in this section shall 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 any 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) shall not apply to any city, city and county, county, or district, or any 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 of, 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 any 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 any of 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 any 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 any 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.

(l) (1) Nothing in subdivision (a) shall prohibit a public agency, or any officer or official thereof, from denying consent to, or approval of, a prospective concessionaire's application for, or acquisition of, any 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 any criminal conviction for offenses involving moral turpitude. Criminal history information for purposes of this subdivision includes any 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) Any 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 from asking an applicant about a criminal conviction of, seeking from any source information regarding a criminal conviction of, utilizing as a factor in determining any condition of employment 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 by law 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 by law 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 by law from hiring an applicant who has been convicted of a crime.

SEC. 2. Section 4852.22 is added to the Penal Code, to read:

4852.22. Except in a case requiring registration pursuant to Section 290, a trial court hearing an application for a certificate of rehabilitation before the applicable period of rehabilitation has elapsed may grant the application if the court, in its discretion, believes relief serves the interests of justice.

SEC. 3. 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.

















Approved \_\_\_\_\_, 2013

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*Governor*