

ASSEMBLY BILL

No. 1843

Introduced by Assembly Member Mark Stone

February 9, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1843, as introduced, Mark Stone. Applicants for employment: criminal history.

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 also prohibits 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, except in specified circumstances. Existing law makes it a crime to intentionally violate these provisions.

This bill would also prohibit an employer from asking an applicant for employment to disclose, or from utilizing as a factor in determining any condition of employment, information concerning specific juvenile court actions or custodial detentions.

Because this bill would expand the definition of a crime, it would impose a state-mandated local program.

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.

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

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

1 SECTION 1. Section 432.7 of the Labor Code is amended to
 2 read:
 3 432.7. (a) No employer, whether a public agency or private
 4 individual or corporation, shall ask an applicant for employment
 5 to disclose, through any written form or verbally, information
 6 concerning an arrest or detention that did not result in ~~conviction,~~
 7 *conviction or juvenile adjudication*, or information concerning a
 8 referral to, and participation in, any pretrial or posttrial diversion
 9 program, or concerning a conviction *or juvenile adjudication* that
 10 has been judicially dismissed or ordered sealed pursuant to law,
 11 including, but not limited to, Sections 1203.4, 1203.4a, 1203.45,
 12 and 1210.1 of the Penal ~~Code,~~ *Code and Sections 781, 786, and*
 13 *793 of the Welfare and Institutions Code*, nor shall any employer
 14 seek from any source whatsoever, or utilize, as a factor in
 15 determining any condition of employment including hiring,
 16 promotion, termination, or any apprenticeship training program
 17 or any other training program leading to employment, any record
 18 of arrest or detention that did not result in ~~conviction,~~ *conviction*
 19 *or juvenile adjudication*, or any record regarding a referral to, and
 20 participation in, any pretrial or posttrial diversion program, or
 21 concerning a conviction *or juvenile adjudication* that has been
 22 judicially dismissed or ordered sealed pursuant to law, including,
 23 but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1
 24 of the Penal ~~Code.~~ *Code and Sections 781, 786, and 793 of the*
 25 *Welfare and Institutions Code*. As used in this section, a conviction
 26 shall include a plea, verdict, or finding of guilt regardless of
 27 whether sentence is imposed by the ~~court.~~ *court, and a juvenile*
 28 *adjudication shall include a finding of wardship under Section*
 29 *602 of the Welfare and Institutions Code*. Nothing in this section
 30 shall prevent an employer from asking an employee or applicant

1 for employment about an arrest for which the employee or applicant
2 is out on bail or on his or her own recognizance pending trial.

3 (b) Nothing in this section shall prohibit the disclosure of the
4 information authorized for release under Sections 13203 and 13300
5 of the Penal Code, to a government agency employing a peace
6 officer. However, the employer shall not determine any condition
7 of employment other than paid administrative leave based solely
8 on an arrest report. The information contained in an arrest report
9 may be used as the starting point for an independent, internal
10 investigation of a peace officer in accordance with Chapter 9.7
11 (commencing with Section 3300) of Division 4 of Title 1 of the
12 Government Code.

13 (c) In any case where a person violates this section, or Article
14 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part
15 4 of the Penal Code, the applicant may bring an action to recover
16 from that person actual damages or two hundred dollars (\$200),
17 whichever is greater, plus costs, and reasonable attorney's fees.
18 An intentional violation of this section shall entitle the applicant
19 to treble actual damages, or five hundred dollars (\$500), whichever
20 is greater, plus costs, and reasonable attorney's fees. An intentional
21 violation of this section is a misdemeanor punishable by a fine not
22 to exceed five hundred dollars (\$500).

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

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

31 (f) Nothing in this section shall prohibit an employer at a health
32 facility, as defined in Section 1250 of the Health and Safety Code,
33 from asking an applicant for employment either of the following:

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

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

1 (g) (1) No peace officer or employee of a law enforcement
2 agency with access to criminal *or juvenile* offender record
3 information maintained by a local law enforcement criminal *or*
4 *juvenile* justice agency shall knowingly disclose, with intent to
5 affect a person's employment, any information contained therein
6 pertaining to an arrest or detention or proceeding that did not result
7 in a conviction, including information pertaining to a referral to,
8 and participation in, any pretrial or posttrial diversion program, to
9 any person not authorized by law to receive that information.

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

18 (3) No person, except those specifically referred to in Section
19 1070 of the Evidence Code, who knowing he or she is not
20 authorized by law to receive or possess criminal *or juvenile* justice
21 records information maintained by a local law enforcement criminal
22 *or juvenile* justice agency, pertaining to an arrest or other
23 proceeding that did not result in a conviction, including information
24 pertaining to a referral to, and participation in, any pretrial or
25 posttrial diversion program, shall receive or possess that
26 information.

27 (h) "A person authorized by law to receive that information,"
28 for purposes of this section, means any person or public agency
29 authorized by a court, statute, or decisional law to receive
30 information contained in criminal *or juvenile* offender records
31 maintained by a local law enforcement criminal *or juvenile* justice
32 agency, and includes, but is not limited to, those persons set forth
33 in Section 11105 of the Penal Code, and any person employed by
34 a law enforcement criminal *or juvenile* justice agency who is
35 required by that employment to receive, analyze, or process
36 criminal *or juvenile* offender record information.

37 (i) Nothing in this section shall require the Department of Justice
38 to remove entries relating to an arrest or detention not resulting in
39 conviction from summary criminal history records forwarded to
40 an employer pursuant to law.

1 (j) As used in this section, “pretrial or posttrial diversion
2 program” means any program under Chapter 2.5 (commencing
3 with Section 1000) or Chapter 2.7 (commencing with Section
4 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
5 13352.5 of the Vehicle Code, *Sections 626, 626.5, 654, or 725 of,*
6 *or Article 20.5 (commencing with Section 790) of Chapter 2 of*
7 *Part 1 of Division 2 of, the Welfare and Institutions Code*, or any
8 other program expressly authorized and described by statute as a
9 diversion program.

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

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

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

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

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

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

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

37 (D) “Associate” means any individual or entity that shares a
38 common business purpose with the prospective concessionaire
39 with respect to the beneficial ownership interest that is subject to

1 the consent or approval of the city, county, city and county, or
2 district.

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

6 (l) (1) Nothing in subdivision (a) shall prohibit a public agency,
7 or any officer or official thereof, from denying consent to, or
8 approval of, a prospective concessionaire’s application for, or
9 acquisition of, any beneficial interest in a concession, lease, or
10 other property interest based on the criminal history information
11 of the prospective concessionaire or the affiliates or associates of
12 the prospective concessionaire that show any criminal conviction
13 for offenses involving moral turpitude. Criminal history
14 information for purposes of this subdivision includes any criminal
15 history information obtained pursuant to Section 11105 or 13300
16 of the Penal Code.

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

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

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

34 (B) The prospective concessionaire shall submit the copy or the
35 corrected record of any other evidence to the public agency within
36 90 days of a request for review. The public agency shall render its
37 decision within 20 days of the submission of evidence by the
38 prospective concessionaire.

39 (m) Subdivision (a) does not prohibit an employer from asking
40 an applicant about a criminal conviction of, seeking from any

1 source information regarding a criminal conviction of, utilizing as
2 a factor in determining any condition of employment of, or entry
3 into a pretrial diversion or similar program by, the applicant if,
4 pursuant to Section 1829 of Title 12 of the United States Code or
5 any other state or federal law, any of the following apply:

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

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

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

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

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