

AMENDED IN SENATE MAY 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1843**

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**Introduced by Assembly Member Mark Stone**

February 9, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1843, as amended, 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 also prohibits a person, knowing that he or she is not authorized to receive or possess that information, from receiving or possessing that information, except as specified.* 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~~; or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while the person was subject to the process and jurisdiction of juvenile court law. The bill would revise the prohibition on receiving or possessing information to instead apply to any person that is not authorized to receive or possess that information. The bill, for the purposes of the prohibitions and exceptions described above, would provide that “conviction” excludes an adjudication by a juvenile court or any other court order or action taken with respect to a person who is currently, or has been under, the jurisdiction of juvenile court law, and would make related and conforming changes.

Because this bill would ~~expand the definition~~ modify the scope 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) (1) No employer, whether a public agency or  
4 private individual or corporation, shall ask an applicant for  
5 employment to disclose, through any written form or verbally,  
6 information concerning an arrest or detention that did not result  
7 in ~~conviction or juvenile adjudication~~, conviction, or information  
8 concerning a referral to, and participation in, any pretrial or  
9 posttrial diversion program, or concerning a conviction or juvenile  
10 ~~adjudication~~ that has been judicially dismissed or ordered sealed  
11 pursuant to law, including, but not limited to, Sections 1203.4,  
12 1203.4a, 1203.45, and 1210.1 of the Penal Code and Sections 781,  
13 786, and 793 of the Welfare and Institutions Code, nor shall any  
14 employer seek from any source whatsoever, or utilize, as a factor  
15 in 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

1 of arrest or detention that did not result in ~~conviction or juvenile~~  
2 ~~adjudication~~, *conviction*, or any record regarding a referral to, and  
3 participation in, any pretrial or posttrial diversion program, or  
4 concerning a ~~conviction or juvenile adjudication~~ that has been  
5 judicially dismissed or ordered sealed pursuant to law, including,  
6 but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1  
7 of the Penal Code and Sections ~~781, 786, and 793~~ of the Welfare  
8 and Institutions Code. As used in this section, a conviction shall  
9 include a plea, verdict, or finding of guilt regardless of whether  
10 sentence is imposed by the court, and a ~~juvenile adjudication shall~~  
11 ~~include a finding of wardship under Section 602 of the Welfare~~  
12 ~~and Institutions Code.~~ *court*. Nothing in this section shall prevent  
13 an employer from asking an employee or applicant for employment  
14 about an arrest for which the employee or applicant is out on bail  
15 or on his or her own recognizance pending trial.

16 (2) *No employer, whether a public agency or private individual*  
17 *or corporation, shall ask an applicant for employment to disclose,*  
18 *through any written form or verbally, information concerning or*  
19 *related to an arrest, detention, processing, diversion, supervision,*  
20 *adjudication, or court disposition that occurred while the person*  
21 *was subject to the process and jurisdiction of juvenile court law,*  
22 *nor shall any employer seek from any source whatsoever, or utilize,*  
23 *as a factor in determining any condition of employment including*  
24 *hiring, promotion, termination, or any apprenticeship training*  
25 *program or any other training program leading to employment,*  
26 *any record concerning or related to an arrest, detention,*  
27 *processing, diversion, supervision, adjudication, or court*  
28 *disposition that occurred while a person was subject to the process*  
29 *and jurisdiction of juvenile court law.*

30 (3) *For purposes of this section, “conviction” does not include,*  
31 *and shall not be construed to include, any adjudication by a*  
32 *juvenile court or any other court order or action taken with respect*  
33 *to a person who is currently, or has been under, the process and*  
34 *jurisdiction of juvenile court law.*

35 (b) Nothing in this section shall prohibit the disclosure of the  
36 information authorized for release under Sections 13203 and 13300  
37 of the Penal Code, to a government agency employing a peace  
38 officer. However, the employer shall not determine any condition  
39 of employment other than paid administrative leave based solely  
40 on an arrest report. The information contained in an arrest report

1 may be used as the starting point for an independent, internal  
2 investigation of a peace officer in accordance with Chapter 9.7  
3 (commencing with Section 3300) of Division 4 of Title 1 of the  
4 Government Code.

5 (c) In any case where a person violates this section, or Article  
6 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part  
7 4 of the Penal Code, the applicant may bring an action to recover  
8 from that person actual damages or two hundred dollars (\$200),  
9 whichever is greater, plus costs, and reasonable attorney's fees.  
10 An intentional violation of this section shall entitle the applicant  
11 to treble actual damages, or five hundred dollars (\$500), whichever  
12 is greater, plus costs, and reasonable attorney's fees. An intentional  
13 violation of this section is a misdemeanor punishable by a fine not  
14 to exceed five hundred dollars (\$500).

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

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

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

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

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

32 (g) (1) No peace officer or employee of a law enforcement  
33 agency with access to criminal or juvenile offender record  
34 information maintained by a local law enforcement criminal or  
35 juvenile justice agency shall knowingly disclose, with intent to  
36 affect a person's employment, any information contained therein  
37 pertaining to an arrest or detention or proceeding that did not result  
38 in a conviction, including information pertaining to a referral to,  
39 and participation in, any pretrial or posttrial diversion program,  
40 *or any information contained therein pertaining to any processing,*

1 *supervision, adjudication, or court disposition that occurred while*  
2 *the person was subject to the process and jurisdiction of juvenile*  
3 *court law, to any person not authorized by law to receive that*  
4 *information.*

5 (2) No other person authorized by law to receive criminal or  
6 juvenile offender record information maintained by a local law  
7 enforcement criminal or juvenile justice agency shall knowingly  
8 disclose any information received therefrom pertaining to an arrest  
9 or detention or proceeding that did not result in a conviction,  
10 including information pertaining to a referral to, and participation  
11 in, any pretrial or posttrial diversion program, *or any information*  
12 *contained therein pertaining to any processing, supervision,*  
13 *adjudication, or court disposition that occurred while the person*  
14 *was subject to the process and jurisdiction of juvenile court law,*  
15 *to any person not authorized by law to receive that information.*

16 (3) No person, except those specifically referred to in Section  
17 1070 of the Evidence Code, ~~who knowing he or she~~ is not  
18 authorized by law to receive or possess criminal or juvenile justice  
19 records information maintained by a local law enforcement criminal  
20 or juvenile justice agency, pertaining to an arrest or other  
21 proceeding that did not result in a conviction, including information  
22 pertaining to a referral to, and participation in, any pretrial or  
23 posttrial diversion program, *or any information contained therein*  
24 *pertaining to any detention, processing, supervision, adjudication,*  
25 *or court disposition that occurred while the person was subject to*  
26 *the process and jurisdiction of juvenile court law, shall receive or*  
27 *possess that information.*

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

38 (i) Nothing in this section shall require the Department of Justice  
39 to remove entries relating to an arrest or detention not resulting in

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

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

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

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

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

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

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

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

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

39 (D) “Associate” means any individual or entity that shares a  
40 common business purpose with the prospective concessionaire

1 with respect to the beneficial ownership interest that is subject to  
2 the consent or approval of the city, county, city and county, or  
3 district.

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

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

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

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

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

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

1 (m) ~~Subdivision~~ *Paragraph (1) of subdivision* (a) does not  
2 prohibit an employer from asking an applicant about a criminal  
3 conviction of, seeking from any source information regarding a  
4 criminal conviction of, utilizing as a factor in determining any  
5 condition of employment of, or entry into a pretrial diversion or  
6 similar program by, the applicant if, pursuant to Section 1829 of  
7 Title 12 of the United States Code or any other state or federal  
8 law, any of the following apply:

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

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

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

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

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