

AMENDED IN SENATE MAY 27, 2016

AMENDED IN SENATE MAY 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 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 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,~~ *under* the jurisdiction of *the* juvenile court law, and would make related and conforming changes.

Because this bill would 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 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 or information concerning a referral to, and participation in, any
 8 pretrial or posttrial diversion program, or concerning a conviction
 9 that has been judicially dismissed or ordered sealed pursuant to
 10 law, including, but not limited to, Sections 1203.4, 1203.4a,
 11 1203.45, and 1210.1 of the Penal Code, nor shall any employer
 12 seek from any source whatsoever, or utilize, as a factor in
 13 determining any condition of employment including hiring,
 14 promotion, termination, or any apprenticeship training program
 15 or any other training program leading to employment, any record
 16 of arrest or detention that did not result in conviction, or any record
 17 regarding a referral to, and participation in, any pretrial or posttrial

1 diversion program, or concerning a conviction that has been
2 judicially dismissed or ordered sealed pursuant to law, including,
3 but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1
4 of the Penal Code. As used in this section, a conviction shall
5 include a plea, verdict, or finding of guilt regardless of whether
6 sentence is imposed by the court. Nothing in this section shall
7 prevent an employer from asking an employee or applicant for
8 employment about an arrest for which the employee or applicant
9 is out on bail or on his or her own recognizance pending trial.

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

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

29 (b) Nothing in this section shall prohibit the disclosure of the
30 information authorized for release under Sections 13203 and 13300
31 of the Penal Code, to a government agency employing a peace
32 officer. However, the employer shall not determine any condition
33 of employment other than paid administrative leave based solely
34 on an arrest report. The information contained in an arrest report
35 may be used as the starting point for an independent, internal
36 investigation of a peace officer in accordance with Chapter 9.7
37 (commencing with Section 3300) of Division 4 of Title 1 of the
38 Government Code.

39 (c) In any case where a person violates this section, or Article
40 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part

1 4 of the Penal Code, the applicant may bring an action to recover
2 from that person actual damages or two hundred dollars (\$200),
3 whichever is greater, plus costs, and reasonable attorney's fees.
4 An intentional violation of this section shall entitle the applicant
5 to treble actual damages, or five hundred dollars (\$500), whichever
6 is greater, plus costs, and reasonable attorney's fees. An intentional
7 violation of this section is a misdemeanor punishable by a fine not
8 to exceed five hundred dollars (\$500).

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

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

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

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

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

26 (g) (1) No peace officer or employee of a law enforcement
27 agency with access to criminal or juvenile offender record
28 information maintained by a local law enforcement criminal or
29 juvenile justice agency shall knowingly disclose, with intent to
30 affect a person's employment, any information contained therein
31 pertaining to an arrest or detention or proceeding that did not result
32 in a conviction, including information pertaining to a referral to,
33 and participation in, any pretrial or posttrial diversion program, ~~or~~
34 ~~any information contained therein pertaining to any processing,~~
35 ~~supervision, adjudication, or court disposition that occurred while~~
36 ~~the person was subject to the process and jurisdiction of juvenile~~
37 ~~court law;~~ to any person not authorized by law to receive that
38 information.

39 (2) No other person authorized by law to receive criminal or
40 juvenile offender record information maintained by a local law

1 enforcement criminal or juvenile justice agency shall knowingly
2 disclose any information received therefrom pertaining to an arrest
3 or detention or proceeding that did not result in a conviction,
4 including information pertaining to a referral to, and participation
5 in, any pretrial or posttrial diversion program, ~~or any information~~
6 ~~contained therein pertaining to any processing, supervision,~~
7 ~~adjudication, or court disposition that occurred while the person~~
8 ~~was subject to the process and jurisdiction of juvenile court law,~~
9 to any person not authorized by law to receive that information.

10 (3) No person, except those specifically referred to in Section
11 1070 of the Evidence Code, who is not authorized by law to receive
12 or possess criminal or juvenile justice records information
13 maintained by a local law enforcement criminal or juvenile justice
14 agency, pertaining to an arrest or other proceeding that did not
15 result in a conviction, including information pertaining to a referral
16 to, and participation in, any pretrial or posttrial diversion program,
17 ~~or any information contained therein pertaining to any detention,~~
18 ~~processing, supervision, adjudication, or court disposition that~~
19 ~~occurred while the person was subject to the process and~~
20 ~~jurisdiction of juvenile court law,~~ shall *knowingly* receive or
21 possess that information.

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

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

36 (j) As used in this section, “pretrial or posttrial diversion
37 program” means any program under Chapter 2.5 (commencing
38 with Section 1000) or Chapter 2.7 (commencing with Section
39 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
40 13352.5 of the Vehicle Code, Sections 626, 626.5, 654, or 725 of,

1 or Article 20.5 (commencing with Section 790) of Chapter 2 of
2 Part 1 of Division 2 of, the Welfare and Institutions Code, or any
3 other program expressly authorized and described by statute as a
4 diversion program.

5 (k) (1) Subdivision (a) shall not apply to any city, city and
6 county, county, or district, or any officer or official thereof, in
7 screening a prospective concessionaire, or the affiliates and
8 associates of a prospective concessionaire for purposes of
9 consenting to, or approving of, the prospective concessionaire's
10 application for, or acquisition of, any beneficial interest in a
11 concession, lease, or other property interest.

12 (2) For purposes of this subdivision the following terms have
13 the following meanings:

14 (A) "Screening" means a written request for criminal or juvenile
15 history information made to a local law enforcement agency.

16 (B) "Prospective concessionaire" means any individual, general
17 or limited partnership, corporation, trust, association, or other
18 entity that is applying for, or seeking to obtain, a public agency's
19 consent to, or approval of, the acquisition by that individual or
20 entity of any beneficial ownership interest in any public agency's
21 concession, lease, or other property right whether directly or
22 indirectly held. However, "prospective concessionaire" does not
23 include any of the following:

24 (i) A lender acquiring an interest solely as security for a bona
25 fide loan made in the ordinary course of the lender's business and
26 not made for the purpose of acquisition.

27 (ii) A lender upon foreclosure or assignment in lieu of
28 foreclosure of the lender's security.

29 (C) "Affiliate" means any individual or entity that controls, or
30 is controlled by, the prospective concessionaire, or who is under
31 common control with the prospective concessionaire.

32 (D) "Associate" means any individual or entity that shares a
33 common business purpose with the prospective concessionaire
34 with respect to the beneficial ownership interest that is subject to
35 the consent or approval of the city, county, city and county, or
36 district.

37 (E) "Control" means the possession, direct or indirect, of the
38 power to direct, or cause the direction of, the management or
39 policies of the controlled individual or entity.

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

12 (2) In considering criminal history information, a public agency
13 shall consider the crime for which the prospective concessionaire
14 or the affiliates or associates of the prospective concessionaire was
15 convicted only if that crime relates to the specific business that is
16 proposed to be conducted by the prospective concessionaire.

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

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

29 (B) The prospective concessionaire shall submit the copy or the
30 corrected record of any other evidence to the public agency within
31 90 days of a request for review. The public agency shall render its
32 decision within 20 days of the submission of evidence by the
33 prospective concessionaire.

34 (m) Paragraph (1) of subdivision (a) does not prohibit an
35 employer from asking an applicant about a criminal conviction of,
36 seeking from any source information regarding a criminal
37 conviction of, utilizing as a factor in determining any condition of
38 employment of, or entry into a pretrial diversion or similar program
39 by, the applicant if, pursuant to Section 1829 of Title 12 of the

1 United States Code or any other state or federal law, any of the
2 following apply:

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

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

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

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

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