

AMENDED IN SENATE AUGUST 11, 2016

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 specifies that these provisions do not prohibit an employer at a health facility, as defined, from asking an applicant for a specific type of employment about arrests for certain crimes.* 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, 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 under the jurisdiction of the juvenile court law, and would make related and conforming changes. *The bill would prohibit an employer at a health facility from inquiring into specific events that occurred while the applicant was subject to juvenile court law, with a certain exception, and from inquiring into information concerning or related to an applicant’s juvenile offense history that has been sealed by the juvenile court. The bill would require an employer at a health facility seeking disclosure of juvenile offense history under that exception to provide the applicant with a list describing offenses for which disclosure is sought.*

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

1 law, including, but not limited to, Sections 1203.4, 1203.4a,
2 1203.45, and 1210.1 of the Penal Code, nor shall any employer
3 seek from any source whatsoever, or utilize, as a factor in
4 determining any condition of employment including hiring,
5 promotion, termination, or any apprenticeship training program
6 or any other training program leading to employment, any record
7 of arrest or detention that did not result in conviction, or any record
8 regarding a referral to, and participation in, any pretrial or posttrial
9 diversion program, or concerning a conviction that has been
10 judicially dismissed or ordered sealed pursuant to law, including,
11 but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1
12 of the Penal Code. As used in this section, a conviction shall
13 include a plea, verdict, or finding of guilt regardless of whether
14 sentence is imposed by the court. Nothing in this section shall
15 prevent an employer from asking an employee or applicant for
16 employment about an arrest for which the employee or applicant
17 is out on bail or on his or her own recognizance pending trial.

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

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

37 (b) Nothing in this section shall prohibit the disclosure of the
38 information authorized for release under Sections 13203 and 13300
39 of the Penal Code, to a government agency employing a peace
40 officer. However, the employer shall not determine any condition

1 of employment other than paid administrative leave based solely
2 on an arrest report. The information contained in an arrest report
3 may be used as the starting point for an independent, internal
4 investigation of a peace officer in accordance with Chapter 9.7
5 (commencing with Section 3300) of Division 4 of Title 1 of the
6 Government Code.

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

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

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

25 (f) ~~Nothing~~ (1) *Except as provided in paragraph (2), nothing*
26 *in this section shall prohibit an employer at a health facility, as*
27 *defined in Section 1250 of the Health and Safety Code, from asking*
28 *an applicant for employment either of the following:*

29 ~~(1)~~

30 (A) With regard to an applicant for a position with regular access
31 to patients, to disclose an arrest under any section specified in
32 Section 290 of the Penal Code.

33 ~~(2)~~

34 (B) With regard to an applicant for a position with access to
35 drugs and medication, to disclose an arrest under any section
36 specified in Section 11590 of the Health and Safety Code.

37 (2) (A) *An employer specified in paragraph (1) shall not inquire*
38 *into information concerning or related to an applicant's arrest,*
39 *detention, processing, diversion, supervision, adjudication, or*
40 *court disposition that occurred while the person was subject to*

1 *the process and jurisdiction of juvenile court law, unless the*
2 *information concerns an adjudication by the juvenile court in*
3 *which the applicant has been found by the court to have committed*
4 *a felony or misdemeanor offense specified in paragraph (1) that*
5 *occurred within five years preceding the application for*
6 *employment.*

7 (B) *Notwithstanding any other provision of this subdivision, an*
8 *employer specified in paragraph (1) shall not inquire into*
9 *information concerning or related to an applicant's juvenile offense*
10 *history that has been sealed by the juvenile court.*

11 (3) *An employer seeking disclosure of offense history under*
12 *paragraph (2) shall provide the applicant with a list describing*
13 *the specific offenses under Section 11590 of the Health and Safety*
14 *Code or Section 290 of the Penal Code for which disclosure is*
15 *sought.*

16 (g) (1) *No peace officer or employee of a law enforcement*
17 *agency with access to criminal or juvenile offender record*
18 *information maintained by a local law enforcement criminal or*
19 *juvenile justice agency shall knowingly disclose, with intent to*
20 *affect a person's employment, any information contained therein*
21 *pertaining to an arrest or detention or proceeding that did not result*
22 *in a conviction, including information pertaining to a referral to,*
23 *and participation in, any pretrial or posttrial diversion program, to*
24 *any person not authorized by law to receive that information.*

25 (2) *No other person authorized by law to receive criminal or*
26 *juvenile offender record information maintained by a local law*
27 *enforcement criminal or juvenile justice agency shall knowingly*
28 *disclose any information received therefrom pertaining to an arrest*
29 *or detention or proceeding that did not result in a conviction,*
30 *including information pertaining to a referral to, and participation*
31 *in, any pretrial or posttrial diversion program, to any person not*
32 *authorized by law to receive that information.*

33 (3) *No person, except those specifically referred to in Section*
34 *1070 of the Evidence Code, who is not authorized by law to receive*
35 *or possess criminal or juvenile justice records information*
36 *maintained by a local law enforcement criminal or juvenile justice*
37 *agency, pertaining to an arrest or other proceeding that did not*
38 *result in a conviction, including information pertaining to a referral*
39 *to, and participation in, any pretrial or posttrial diversion program,*
40 *shall knowingly receive or possess that information.*

1 (h) “A person authorized by law to receive that information,”
2 for purposes of this section, means any person or public agency
3 authorized by a court, statute, or decisional law to receive
4 information contained in criminal or juvenile offender records
5 maintained by a local law enforcement criminal or juvenile justice
6 agency, and includes, but is not limited to, those persons set forth
7 in Section 11105 of the Penal Code, and any person employed by
8 a law enforcement criminal or juvenile justice agency who is
9 required by that employment to receive, analyze, or process
10 criminal or juvenile offender record information.

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

15 (j) As used in this section, “pretrial or posttrial diversion
16 program” means any program under Chapter 2.5 (commencing
17 with Section 1000) or Chapter 2.7 (commencing with Section
18 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
19 13352.5 of the Vehicle Code, Sections 626, 626.5, 654, or 725 of,
20 or Article 20.5 (commencing with Section 790) of Chapter 2 of
21 Part 1 of Division 2 of, the Welfare and Institutions Code, or any
22 other program expressly authorized and described by statute as a
23 diversion program.

24 (k) (1) Subdivision (a) shall not apply to any city, city and
25 county, county, or district, or any officer or official thereof, in
26 screening a prospective concessionaire, or the affiliates and
27 associates of a prospective concessionaire for purposes of
28 consenting to, or approving of, the prospective concessionaire’s
29 application for, or acquisition of, any beneficial interest in a
30 concession, lease, or other property interest.

31 (2) For purposes of this subdivision the following terms have
32 the following meanings:

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

35 (B) “Prospective concessionaire” means any individual, general
36 or limited partnership, corporation, trust, association, or other
37 entity that is applying for, or seeking to obtain, a public agency’s
38 consent to, or approval of, the acquisition by that individual or
39 entity of any beneficial ownership interest in any public agency’s
40 concession, lease, or other property right whether directly or

1 indirectly held. However, “prospective concessionaire” does not
2 include any of the following:

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

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

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

11 (D) “Associate” means any individual or entity that shares a
12 common business purpose with the prospective concessionaire
13 with respect to the beneficial ownership interest that is subject to
14 the consent or approval of the city, county, city and county, or
15 district.

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

19 (l) (1) Nothing in subdivision (a) shall prohibit a public agency,
20 or any officer or official thereof, from denying consent to, or
21 approval of, a prospective concessionaire’s application for, or
22 acquisition of, any beneficial interest in a concession, lease, or
23 other property interest based on the criminal history information
24 of the prospective concessionaire or the affiliates or associates of
25 the prospective concessionaire that show any criminal conviction
26 for offenses involving moral turpitude. Criminal history
27 information for purposes of this subdivision includes any criminal
28 history information obtained pursuant to Section 11105 or 13300
29 of the Penal Code.

30 (2) In considering criminal history information, a public agency
31 shall consider the crime for which the prospective concessionaire
32 or the affiliates or associates of the prospective concessionaire was
33 convicted only if that crime relates to the specific business that is
34 proposed to be conducted by the prospective concessionaire.

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

1 (4) (A) If the prospective concessionaire submits a written
 2 request to the public agency within 10 days of the date of the notice
 3 of denial, the public agency shall review its decision with regard
 4 to any corrected record or other evidence presented by the
 5 prospective concessionaire as to the accuracy or incompleteness
 6 of the criminal history information utilized by the public agency
 7 in making its original decision.

8 (B) The prospective concessionaire shall submit the copy or the
 9 corrected record of any other evidence to the public agency within
 10 90 days of a request for review. The public agency shall render its
 11 decision within 20 days of the submission of evidence by the
 12 prospective concessionaire.

13 (m) Paragraph (1) of subdivision (a) does not prohibit an
 14 employer from asking an applicant about a criminal conviction of,
 15 seeking from any source information regarding a criminal
 16 conviction of, utilizing as a factor in determining any condition of
 17 employment of, or entry into a pretrial diversion or similar program
 18 by, the applicant if, pursuant to Section 1829 of Title 12 of the
 19 United States Code or any other state or federal law, any of the
 20 following apply:

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

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

25 (3) An individual who has been convicted of a crime is
 26 prohibited by law from holding the position sought by the
 27 applicant, regardless of whether that conviction has been expunged,
 28 judicially ordered sealed, statutorily eradicated, or judicially
 29 dismissed following probation.

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

32 SEC. 2. No reimbursement is required by this act pursuant to
 33 Section 6 of Article XIII B of the California Constitution because
 34 the only costs that may be incurred by a local agency or school
 35 district will be incurred because this act creates a new crime or
 36 infraction, eliminates a crime or infraction, or changes the penalty
 37 for a crime or infraction, within the meaning of Section 17556 of
 38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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