

ASSEMBLY BILL

No. 2738

Introduced by Assembly Member Kevin Murray

February 22, 1996

An act to amend Section 44237 of the Education Code, relating to private school employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 2738, as introduced, K. Murray. Private school employees.

Existing law prohibits the provisions related to the requirement that every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level require each new employee having contact with minor pupils and not possessing a valid California state teaching credential, or not currently licensed by another state agency that requires a criminal record summary, to submit 2 sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the department and the Federal Bureau of Investigation, from being construed to prohibit the employment of any person based upon his or her criminal record.

This bill would delete this prohibition.

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

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

1 SECTION 1. Section 44237 of the Education Code is
2 amended to read:

3 44237. (a) Commencing October 1, 1985, every
4 person, firm, association, partnership, or corporation
5 offering or conducting private school instruction on the
6 elementary or high school level shall require each new
7 employee having contact with minor pupils and not
8 possessing a valid California state teaching credential, or
9 not currently licensed by another state agency that
10 requires a criminal record summary, to submit on or
11 before the first day of his or her employment, two sets of
12 fingerprints to the Department of Justice for the purpose
13 of obtaining a criminal record summary from the
14 Department of Justice and the Federal Bureau of
15 Investigation. This requirement is a condition of
16 employment. It is the intent of the Legislature under this
17 section to assist in the employment decision. ~~This section~~
18 ~~shall not be construed, however, to prohibit the~~
19 ~~employment of any person based upon his or her criminal~~
20 ~~record.~~

21 (b) The Department of Justice shall furnish a criminal
22 record summary to the employer designated by a new
23 employee submitting fingerprints pursuant to
24 subdivision (a). The criminal record summary shall
25 contain only arrests resulting in a conviction and arrests
26 pending final adjudication. The criminal record summary
27 furnished to the employer shall be maintained by the
28 employer in a secured file separate from personnel files,
29 and shall be maintained in accordance with regulations
30 for Criminal Offender Record Information Security as
31 specified in Subchapter 7 (commencing with Section
32 700) of Chapter 1 of Title 11 of the California
33 Administrative Code.

34 (c) The Department of Justice shall review the
35 criminal record summary it obtains from the Federal
36 Bureau of Investigation to ascertain whether or not a new
37 employee has a conviction record or an arrest pending
38 final adjudication for any sex offense, controlled



1 substance offense, or crime of violence. The Department
2 of Justice shall provide written notification to the private
3 school employer only as to whether or not a new
4 employee has any convictions or arrests pending final
5 adjudication for any of those crimes, but shall not provide
6 information identifying any offense for which an
7 employee was convicted or arrested.

8 (d) The employer may request subsequent arrest
9 service from the Department of Justice as is provided
10 under Section 11105.2 of the Penal Code.

11 (e) As used in this section, the following terms shall
12 have the following definitions:

13 (1) "Crime of violence" means a conviction for any of
14 the offenses specified in subdivision (c) of Section 667.5
15 of the Penal Code, or a violation or attempted violation
16 of Chapter 8 (commencing with Section 236) or Chapter
17 9 (commencing with Section 240) of Title 8 of Part 1 of the
18 Penal Code.

19 ~~Out-of-state convictions~~

20 *An out-of-state conviction* for any violation or
21 attempted violation of any crime prescribed in this
22 paragraph shall also be deemed a crime of violence.

23 (2) "Controlled substance offense" means a felony
24 conviction for a violation or attempted violation of
25 Division 10 (commencing with Section 11000) of the
26 Health and Safety Code.

27 ~~Out-of-state convictions~~

28 *An out-of-state conviction* for any violation or
29 attempted violation of any crime prescribed in this
30 paragraph shall also be deemed a crime of violence.

31 (3) "Employer" means every person, firm, association,
32 partnership, or corporation offering or conducting
33 private school instruction on the elementary or high
34 school level.

35 (4) "New employee" means any person hired to work
36 in a private school on or after July 1, 1985, on a regular,
37 paid full-time or regular, paid part-time basis who will
38 have contact with minor pupils.

39 (5) "Sex offense" means a conviction for any violation
40 or attempted violation of Section 220, 261, 261.5, 264, 266,



1 266j, 267, 273a, 273d, 285, 286, 288, 289, 311.2, 311.3, 311.4,
 2 313.1, 314, 647b, or 647d of the Penal Code, or former
 3 Section 647a of the Penal Code, or commitment as a
 4 mentally disordered sex offender under former Article 1
 5 (commencing with Section 6300) of Chapter 2 of Part 2
 6 of the Welfare and Institutions Code as repealed by
 7 Chapter 928 of the Statutes of 1981.

8 ~~Out-of-state convictions~~

9 *An out-of-state conviction* for any violation or
 10 attempted violation of any crime prescribed in this
 11 paragraph shall also be deemed a sex offense.

12 (f) Any new employee who wishes to have his or her
 13 employer consider information relevant to his or her
 14 criminal record, such as evidence of rehabilitation, shall
 15 be responsible for submitting these facts or
 16 documentation to his or her employer.

17 (g) The Commission on Teacher Credentialing shall
 18 send on a monthly basis to each private school a list of all
 19 teachers who have had their state teaching credential
 20 revoked or suspended. The list shall be identical to the list
 21 compiled for public schools in the state. The commission
 22 shall also send on a quarterly basis a complete and
 23 updated list of all teachers who have had their teaching
 24 credentials revoked or suspended, excluding teachers
 25 who have had their credentials reinstated, or who are
 26 deceased.

27 (h) The Department of Justice may charge each
 28 applicant for a criminal record summary a reasonable fee
 29 to cover costs associated with the processing, reviewing,
 30 and supplying of the criminal record summary as
 31 required by this section. In no event, shall the fee exceed
 32 the actual costs incurred by the department.

