

ASSEMBLY BILL

No. 1260

Introduced by Assembly Member Davis

February 28, 1997

An act to amend Sections 432.7, 432.8, and 1057 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1260, as introduced, Davis. Employment: arrest record: conviction.

Existing law prohibits an employer, whether public or private, individual or corporate, from asking an applicant for employment to disclose, or utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, except as specified, or to disclose a conviction for specified provisions related to controlled substances.

Existing law generally prohibits an employer who requires an employee or applicant for employment to be photographed or fingerprinted from using the photograph or fingerprint to the detriment of the employee or applicant.

This bill would provide that these prohibitions do not apply to a public or private agency that provides services to minors under the authority of a county probation, welfare, health, or mental health department when requesting this information from a person applying for employment that will involve custody, care, or supervision of a minor, or from an employee of one of these entities who provides custody, care, or supervision of a minor.

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 432.7 of the Labor Code is
 2 amended to read:
 3 432.7. (a) ~~No~~ An employer, whether a public agency
 4 or private individual or corporation, ~~shall may not~~ ask an
 5 applicant for employment to disclose, ~~through any in a~~
 6 ~~written or verbal form or verbally,~~ information
 7 concerning an arrest or detention that did not result in
 8 conviction, or information concerning a referral to, and
 9 participation in, any pretrial or posttrial diversion
 10 program, nor ~~shall any may an~~ employer seek from any
 11 source whatsoever, or utilize, as a factor in determining
 12 any condition of employment including hiring,
 13 promotion, termination, or any apprenticeship training
 14 program or any other training program leading to
 15 employment, any record of arrest or detention that did
 16 not result in conviction, or any record regarding a referral
 17 to, and participation in, any pretrial or posttrial diversion
 18 program. As used in this section, a conviction ~~shall include~~
 19 *includes* a plea, verdict, or finding of guilt regardless of
 20 whether sentence is imposed by the court. ~~Nothing in this~~
 21 *This* section ~~shall does not~~ prevent an employer from
 22 asking an employee or applicant for employment about
 23 an arrest for which the employee or applicant is out on
 24 bail or on his or her own recognizance pending trial.
 25 (b) ~~Nothing in this~~ *This* section ~~shall does not~~ prohibit
 26 the disclosure of the information authorized for release
 27 under Sections 13203 and 13300 of the Penal Code, to a
 28 government agency employing a peace officer. However,
 29 the employer ~~shall may not~~ determine any condition of
 30 employment other than paid administrative leave based
 31 solely on an arrest report. The information contained in
 32 an arrest report may be used as the starting point for an
 33 independent, internal investigation of a peace officer in
 34 accordance with Chapter 9.7 (commencing with Section
 35 3300) of Division 4 of Title 1 of the Government Code.



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

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

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

22 (f) ~~Nothing in this~~ *This* section ~~shall~~ *does not* prohibit
23 an employer at a health facility, as defined in Section 1250
24 of the Health and Safety Code, from asking an applicant
25 for employment either of the following:

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

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

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



1 pertaining to a referral to, and participation in, any
 2 pretrial or posttrial diversion program, to any person not
 3 authorized by law to receive that information.

4 (2) ~~No other~~ A person authorized by law to receive
 5 criminal offender record information maintained by a
 6 local law enforcement criminal justice agency ~~shall~~ *may*
 7 *not* knowingly disclose any information received
 8 therefrom pertaining to an arrest or detention or
 9 proceeding that did not result in a conviction, including
 10 information pertaining to a referral to, and participation
 11 in, any pretrial or posttrial diversion program, to any
 12 person not authorized by law to receive that information.

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

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

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

39 (j) As used in this section, “pretrial or posttrial
 40 diversion program” means any program under Chapter



1 2.5 (commencing with Section 1000) or Chapter 2.7
2 (commencing with Section 1001) of Title 6 of Part 2 of the
3 Penal Code, Section 13201 or 13352.5 of the Vehicle Code,
4 or any other program expressly authorized and described
5 by statute as a diversion program.

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

14 (2) For purposes of this subdivision, the following
15 terms have the following meanings:

16 (A) "Screening" means a written request for criminal
17 history information made to a local law enforcement
18 agency.

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

28 (i) A lender acquiring an interest solely as security for
29 a bona fide loan made in the ordinary course of the
30 lender's business and not made for the purpose of
31 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
35 controls, or is controlled by, the prospective
36 concessionaire, or who is under common control with the
37 prospective concessionaire.

38 (D) "Associate" means any individual or entity that
39 shares a common business purpose with the prospective
40 concessionaire with respect to the beneficial ownership



1 interest that is subject to the consent or approval of the
2 city, county, city and county, or district.

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

7 (l) (1) ~~Nothing in subdivision~~ *Subdivision* (a) ~~shall~~
8 *does not* prohibit a public agency, or any officer or official
9 thereof, from denying consent to, or approval of, a
10 prospective concessionaire’s application for, or
11 acquisition of, any beneficial interest in a concession,
12 lease, or other property interest based on the criminal
13 history information of the prospective concessionaire or
14 the affiliates or associates of the prospective
15 concessionaire that show any criminal conviction for
16 offenses involving moral turpitude. Criminal history
17 information, for purposes of this subdivision, includes any
18 criminal history information obtained pursuant to
19 Section 11105 or 13300 of the Penal Code.

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

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

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



1 (B) The prospective concessionaire shall submit the
2 copy or the corrected record of any other evidence to the
3 public agency within 90 days of a request for review. The
4 public agency shall render its decision within 20 days of
5 the submission of evidence by the prospective
6 concessionaire.

7 *(m) This section does not prohibit a public or private*
8 *agency that provides services to minors under the*
9 *authority of a county probation, welfare, health, or*
10 *mental health department from requesting the*
11 *information described in subdivision (a) from a person*
12 *applying for employment that will involve custody, care,*
13 *or supervision of a minor.*

14 SEC. 2. Section 432.8 of the Labor Code is amended
15 to read:

16 432.8. (a) The limitations on employers and the
17 penalties provided for in Section 432.7 shall apply to a
18 conviction for violation of subdivision (b) or (c) of
19 Section 11357 of the Health and Safety Code or a statutory
20 predecessor thereof, or subdivision (c) of Section 11360
21 of the Health and Safety Code, or Section 11364, 11365, or
22 11550 of the Health and Safety Code as they related to
23 marijuana prior to January 1, 1976, or a statutory
24 predecessor thereof, two years from the date of such a
25 conviction.

26 *(b) Notwithstanding subdivision (a), this section does*
27 *not prohibit a public or private agency that provides*
28 *services to minors under the authority of a county*
29 *probation, welfare, health, or mental health department*
30 *from requesting the information described in subdivision*
31 *(a) from a person applying for employment that will*
32 *involve custody, care, or supervision of a minor.*

33 SEC. 3. Section 1057 of the Labor Code is amended to
34 read:

35 1057. Section 1051 ~~shall~~ does not apply to ~~any~~
36 ~~employee~~ either of the following:

37 (a) An employee of a diversified or nondiversified
38 management company, as defined in Section 80a-5 of
39 Title 15 of the United States Code, and the affiliates
40 thereof, as defined in Sections 80a-2(a)(2) and



1 80a-2(a)(3) of Title 15 of the United States Code, who is
2 required to be fingerprinted pursuant to federal law.
3 *(b) An employee providing custody, care, or*
4 *supervision or a minor for a public or private agency*
5 *under the authority of a county probation, welfare,*
6 *health, or mental health department.*

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