

AMENDED IN ASSEMBLY MAY 30, 2017

AMENDED IN ASSEMBLY MAY 1, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

ASSEMBLY BILL

No. 1008

**Introduced by Assembly Members McCarty, Weber, Holden,
Gipson, and Reyes**

February 16, 2017

An act to add Section 12952 to the Government Code, and to repeal Section 432.9 of the Labor Code, relating to employment discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1008, as amended, McCarty. Employment discrimination: prior criminal history.

Existing law, the California Fair Employment and Housing Act (FEHA), prohibits an employer from engaging in various defined forms of discriminatory employment practices.

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 postural diversion program, except as specified. Existing law also prohibits a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction, except as specified, until the agency has determined the applicant meets the minimum employment qualifications for the position.

This bill would repeal the prohibition on a state or local agency from asking an applicant for employment to disclose information regarding a criminal conviction, as described above. The bill would, instead, provide it is an unlawful employment practice under FEHA for an employer to include on any application for employment any question that seeks the disclosure of an applicant's criminal history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate specified information related to prior criminal convictions, except as provided.

This bill would also require an employer who intends to deny an application a position of employment solely or in part because of the applicant's prior conviction of a crime to make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job, and to consider certain topics when making that assessment. The bill would require that, if an employer makes a preliminary determination based on that individualized assessment to deny the applicant employment, the employer must notify the applicant of the reasons for that preliminary decision. The bill would authorize an applicant to respond to that notification within 10 days with information that challenges the accuracy of the information in the notification or that includes specified mitigation or rehabilitation evidence. The bill would require an employer to consider information submitted by the applicant before making a final decision. The bill would require an employer who has made a final decision to deny employment to the applicant to notify the applicant in writing of specified topics. The bill would exempt specified positions of employment from the provisions of the bill.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) In 2013, the State of California passed historic legislation
- 4 to reduce barriers to employment for people with conviction
- 5 histories, and to decrease unemployment in communities with
- 6 concentrated numbers of people with conviction histories,

1 recognizing that these barriers are matters of statewide concern.
2 The Ban the Box law passed in 2013 applied to state agencies, all
3 cities and counties, including charter cities and charter counties,
4 and special districts.

5 (b) In 2015, President Obama directed all federal agencies to
6 “Ban the Box” and refrain from asking applicants about their
7 convictions on the initial job application.

8 (c) Nationwide, 24 states and over 150 cities and counties have
9 adopted a “Ban the Box” law, and over 300 companies have signed
10 the White House Fair Chance hiring pledge.

11 (d) Nine states and 15 major cities, including Los Angeles and
12 San Francisco, have adopted fair chance hiring laws that cover
13 both public and private sector employers. Over 20 percent of the
14 United States population now lives in a state or locality that
15 prohibits private employers from inquiring into an applicant’s
16 record at the start of the hiring process.

17 (e) Since 2013, when Assembly Bill 218 was signed into law,
18 five states have adopted fair chance hiring laws that cover private
19 employers, Connecticut, Illinois, New Jersey, Oregon, and
20 Vermont, as well as several major cities, including Baltimore, New
21 York City, Philadelphia, and Austin, Texas.

22 (f) Roughly seven million Californians, or nearly one in three
23 adults, have an arrest or conviction record that can significantly
24 undermine their efforts to obtain gainful employment.

25 (g) Experts have found that employment is essential to helping
26 formerly incarcerated people support themselves and their families,
27 that a job develops prosocial behavior, strengthens community
28 ties, enhances self-esteem, and improves mental health, all of which
29 reduce recidivism. These effects are strengthened the longer the
30 person holds the job, and especially when it pays more than
31 minimum wage.

32 (h) Experts have found that people with criminal records have
33 lower rates of turnover and higher rates of promotion on the job
34 and that the personal contact with potential employees can reduce
35 the negative stigma of a conviction by approximately 15 percent.

36 SEC. 2. Section 12952 is added to the Government Code, to
37 read:

38 12952. (a) Except as provided in subdivision (d), it is an
39 unlawful employment practice for an employer to do any of the
40 following:

1 (1) To include on any application for employment any question
2 that seeks the disclosure of an applicant's criminal history.

3 (2) To inquire into or consider the conviction history of the
4 applicant, including any inquiry about conviction history on any
5 employment application, until after the applicant has received a
6 conditional offer.

7 (3) In conducting a conviction history background check in
8 connection with any application for employment, to consider,
9 distribute, or disseminate information on any of the following:

10 (A) Arrest not followed by conviction.

11 (B) Referral to or participation in a pretrial or posttrial diversion
12 program.

13 (C) Convictions that have been sealed, dismissed, expunged,
14 or statutorily eradicated pursuant to law.

15 (D) Misdemeanor convictions for which no jail sentence can
16 be imposed, or infractions.

17 (E) Misdemeanor convictions for which three years have passed
18 since the date of conviction or felony convictions for which seven
19 years have passed since the date of conviction.

20 (4) To interfere with, restrain, or deny the exercise of, or the
21 attempt to exercise, any right provided under this section.

22 (b) This section shall not be construed to prevent an employer
23 from conducting a conviction history background check not in
24 conflict with the provisions of subdivision (a).

25 (c) (1) (A) An employer that intends to deny an applicant a
26 position of employment solely or in part because of the applicant's
27 prior conviction of a crime must make an individualized assessment
28 of whether the applicant's conviction history has a direct and
29 adverse relationship with the specific duties of the job that justify
30 denying the applicant the position. In making the assessment
31 described in this paragraph, the employer shall at least consider
32 all of the following:

33 (i) The nature and gravity of the offense or conduct.

34 (ii) The time that has passed since the offense or conduct and
35 completion of the sentence.

36 (iii) The nature of the job held or sought.

37 (B) In making the individualized assessment described in this
38 paragraph, the employer shall be consistent with the Equal
39 Employment Opportunity Commission's Consideration of Arrest
40 and Conviction Records in Employment Decisions Under Title

VII of the Civil Rights Act of 1964 (April 2012) and the regulations of the Department.

(2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies him or her from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification shall contain all of the following:

(A) Identify the conviction item that is the basis for the potential denial or disqualification.

(B) Provide a copy of the conviction history report, if any.

(C) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide.

(D) Provide notice of the applicant's right to respond as described in this section, and time limit to respond.

(3) The applicant shall have at least 10 business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. That response may include information that challenges the accuracy of any information provided in the notice, or the submission of mitigation or rehabilitation evidence, or both. Evidence of mitigation or rehabilitation may be established by any of the following:

(A) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime.

(B) Evidence showing compliance with terms and conditions of probation or parole.

(C) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.

(4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision.

(5) If an employer makes a final decision to deny an application solely or in part because of the applicant's prior conviction of a crime, the employer shall notify the applicant in writing of all the following:

(A) The final denial or disqualification.

(B) Any existing procedure the employer has to challenge the decision or request reconsideration.

(C) Whether the applicant may be eligible for other employment or occupation with the employer.

1 (D) The earliest date the applicant may reapply for a position
2 of employment.

3 (E) The right to file a complaint with the department.

4 (d) ~~(1)~~—This section does not apply in any of the following
5 circumstances:

6 ~~(A)~~

7 ~~(1)~~ To a position for which a state or local agency is otherwise
8 required by law to conduct a conviction history background check.

9 ~~(B)~~

10 ~~(2)~~ To a position with a criminal justice agency, as defined in
11 Section 13101 of the Penal Code.

12 ~~(2)~~ With regard to a position that federal or state law prohibits
13 the employer from hiring an applicant who has been convicted of
14 a particular crime, this section shall apply as follows:

15 ~~(A)~~ Notwithstanding paragraphs (1) and (2) of subdivision (a),
16 an employer may inquire, before a conditional offer is made, as
17 to the conviction history of an applicant for only the particular
18 crime that federal or state law prohibits the employer from hiring
19 the applicant into that position, but the employer shall not inquire
20 as to or consider the conviction history of the applicant for any
21 other crime.

22 ~~(B)~~ An employer is not required to comply with paragraph (3)
23 of subdivision (a) for that position only to the extent that federal
24 or state law requires the employer to consider, distribute, or
25 disseminate the information described in paragraph (3) of
26 subdivision (a) for that position.

27 ~~(C)~~ An employer is not required to comply with paragraph (1)
28 of subdivision (c) for that position. In that instance, the employer
29 shall inform the applicant, in the notice described in paragraph (2)
30 of subdivision (c), that a federal or state law prohibits the employer
31 from hiring the applicant because of his or her conviction history.

32 ~~(3)~~ To a position as a Farm Labor Contractor, as described in
33 Section 1685 of the Labor Code.

34 ~~(4)~~ To a position where an employer or agent thereof is required
35 to take an action pursuant to any state, federal, or local law that
36 requires criminal background checks for employment purposes or
37 restricts employment based on criminal history. For purposes of
38 this paragraph, federal law shall include rules or regulations
39 promulgated by a self-regulatory organization as defined in Section
40 3(a)(26) of the Securities Exchange Act of 1934, as amended by

1 *124 Stat. 1652 (Public Law 111-203), pursuant to the authority*
2 *in Section 19(b) of the Securities Exchange Act of 1934, as*
3 *amended by 124 Stat. 1652 (Public Law 111-203).*

4 (e) The remedies under this section shall be in addition to and
5 not in derogation of all other rights and remedies that an applicant
6 may have under any other law, including any local ordinance.

7 SEC. 3. Section 432.9 of the Labor Code is repealed.

O