
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1339 **Hearing Date:** June 13, 2017
Author: Cunningham
Version: March 29, 2017
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Public Employment: Background Investigations*

HISTORY

Source: California State Sheriff's Association

Prior Legislation: SB 1097 (Boatwright) Ch. 135, Stats. of 1993

Support: California Police Chiefs Association; California Probation, Parole and Correctional Association; California Public Defenders Association; Chief Probation Officers of California; California State Sheriffs' Association; San Bernardino County Sheriff's Department; San Diego County Sheriff's Department

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to require an employer to disclose employment information relating to a current or former employee who has applied for a position other than a sworn peace officer within a law enforcement agency.

Existing law establishes minimum standards for individuals seeking employment as peace officers, including (1) citizenship or lawful permanent residency and eligibility and application for citizenship; (2) a minimum age of 18; (3) fingerprinting to disclose any criminal record; (4) good moral character as determined by a thorough background investigation; (5) graduation from high school or the equivalent thereof; and (6) satisfactory physical and mental condition. (Gov. Code § 1031.)

Existing law requires an employer, upon request of a law enforcement agency that is conducting a background investigation for first-time applicants for a peace officer position, to disclose employment information relating to a current or former employee if the following conditions are met:

- 1) The request is made in writing.
- 2) The request is accompanied by a notarized authorization by the applicant releasing the employer of liability.

- 3) The request and the authorization are presented to the employer by a sworn officer or other authorized representative of the employing law enforcement agency. (Gov. Code § 1031.1, subd. (a)(1)-(3).)

Existing law defines “employment information” as including written information in connection with job applications, performance evaluations, attendance records, disciplinary actions, eligibility for rehire, and other information relevant to peace officer performance, except information prohibited from disclosure by any other state or federal law or regulation. (Gov. Code § 1031.1, subd. (c).)

Existing law provides that an employer who, in the absence of fraud or malice, discloses information to a law enforcement agency conducting a background investigation is exempt from civil liability. (Gov. Code § 1031.1, subd. (b).)

Existing law provides for the confidentiality of information disclosed by an employer except that it may be shared with another law enforcement agency with which the subject has applied. (Gov. Code § 1031.1, subd. (e).)

Existing law provides that an employer’s refusal to disclose information to a law enforcement agency conducting a background investigation constitutes grounds for a civil action for injunctive relief requiring disclosure on the part of the employer. (Gov. Code § 1031.1, subd. (d).)

Existing law permits employers to charge reasonable fees to cover the cost of producing the employment report. (Gov. Code § 1031.1, subd. (f).)

This bill extends the employer disclosure requirements to include information relating to a current or former employee who is an applicant for a position other than as a sworn peace officer with a law enforcement agency.

COMMENTS

1. Need for This Bill

According to the author:

In order to ensure that law enforcement agencies hire the most qualified and ethical candidates, they perform thorough background checks on employment candidates. This existing tool not only helps ensure that agencies have as much accurate and appropriate information as possible, but protects employers from liability in disclosing information to a prospective employer. Law enforcement agencies employ persons in sensitive roles (e.g. evidence retention, dispatch, etc.) that are not sworn peace officer positions. Extending the existing provision on performing a thorough background check to all prospective employees of a law enforcement agency, not just candidates for sworn peace officer positions will help ensure law enforcement agencies have as much information as possible when making employment decisions for all positions with access to sensitive items or information.

2. Mandated Disclosure for Initial Hire Peace Officer Applicants

Government Code section 1031.1 declares the Legislature's intent that law enforcement agencies have access to pertinent information about peace officer applicants in order to ensure that qualified individuals with good moral character are selected. In the absence of fraud or malice, no employer is subject to civil liability for any relevant cause of action by virtue of releasing employment information required pursuant to this section. (Govt. Code, § 1031.1, subd. (b).) The analysis for SB 1097 (Boatwright), Chapter 135, Statutes of 1993, which created Government Code section 1031.1 indicates that employers were exempted from civil liability to address employers' reluctance to disclose employee information due to concerns regarding liability. (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 1097 (1993-1994 Reg. Sess.) as amended Apr. 12, 1993.) SB 1097 was crafted narrowly to impose the disclosure requirement only when the applicant is not currently employed as a peace officer. In other words, lateral hires are not affected by the provisions in this section.

This bill extends an employer's disclosure requirements, and immunity for compliance, to applicants for a position other than a sworn peace officer within a law enforcement agency.

3. Argument in Support

According to the California State Sheriff's Association, the sponsor of the bill:

Law enforcement agencies employ persons in sensitive roles (e.g., evidence retention, dispatch, etc.) that are not sworn peace officer positions. In order to ensure that law enforcement agencies hire the most qualified and ethical candidates, they perform thorough background checks on employment candidates. Extending this authority will help ensure law enforcement agencies have as much information as possible when making employment decisions for all positions with access to sensitive items or information.

-- END --