
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1412 **Hearing Date:** April 24, 2018
Author: Bradford
Version: February 16, 2018
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Applicants for Employment: Criminal History*

HISTORY

Source: The New Way of Life Re-Entry Project

Prior Legislation: AB 1008 (McCarty) Chapter 789, Stats. 2017
AB 1843 (Mark Stone) Chapter 686, Stats. 2016
SB 530 (Wright) Chapter 721, Stats. 2013

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this bill is to clarify the limited circumstances when an employer is not prohibited from asking an applicant about particular convictions that have been judicially dismissed or ordered sealed.

Existing law prohibits employers from considering a judicially sealed or expunged conviction when doing a conviction history background check on a job applicant. This does not apply to a position with a criminal justice agency, a position as a farm labor contractor, or a position where an employer is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. (Government Code §12952)

Existing law prevents employers from asking a job applicant to disclose information concerning an arrest that did not result in conviction, participation or referral to a diversion program, or a conviction that has been judicially dismissed or ordered sealed. This restriction does not prohibit an employer from considering a criminal conviction as a factor if the employer is required by state or federal law to obtain information regarding a conviction of an applicant, if the applicant would be required to possess or use a firearm in the course of his or her employment, or if an individual who has been convicted of a crime is prohibited by law from holding the position sought by the applicant. (Labor Code §432.7)

This bill clarifies the exemptions in the labor code concerning the consideration of expunged records, preventing employers from denying a job applicant based on an expunged conviction that does not bar the applicant from holding the desired position.

COMMENTS

1. Need for This Bill

According to the author:

Expungement is a legal practice that allows for the removal of penalties and disabilities incurred from a previous conviction. The process is available to all defendants convicted of misdemeanors, as well as those who committed felonies, if the individual did not serve time in state prison.

Due to various state and federal laws, some employers are required to conduct background checks to screen for specific convictions that are relevant for a sensitive position. For example, a person who has an embezzlement conviction can be denied a job at a bank, even if that conviction was expunged. Police officers and many professions involving childcare are also subject to more stringent job qualifications. Previously, the law was amended to allow employers to review specific convictions, even if expunged, in such circumstances.

However, in recent years, some employers have been overzealous in their screening. Many people with unrelated and expunged convictions have been denied employment for a mistake that they have already been punished for. This defeats the underlying rehabilitation goal of the criminal justice system. Employers wrongly believe that the previous amendment allows them to reject an applicant for an unrelated, expunged conviction.

The problem is that the history surrounding criminal convictions is mired in racial and socioeconomic injustices. Furthermore, the process to have one's conviction expunged is already arduous and time-consuming. Continuing to allow irrelevant convictions to jeopardize a person's job application denies too many Californians a second chance at gainful employment. SB 1412 brings the clarity that is needed and the technical fix to existing law that will help allow truly rehabilitated Californians successfully reenter the job market and keep their lives on track.

2. Prohibition on Use of Expunged or Dismissed Documents

Currently, existing law is structured so that expunged or judicially sealed convictions cannot be considered until a conditional offer of employment has been offered to the applicant. Exceptions exist where certain employers of more sensitive jobs must consider specific convictions to be grounds for dismissal from the application process. For example, an applicant for a job with a bank cannot have any prior convictions of fraud or money-laundering even if they were expunged. Due to the way that background checks return information on all convictions on a person's record, it has been reported that employers are using this information to exclude employees who have any expunged conviction on their record, rather than considering crimes that would have a direct impact on their ability to do their job.

SB 530 (Wright) Chapter 721, Statutes 2013 which created the prohibition on asking about expunged convictions was intended to make it clear that employers were generally not supposed to ask about or use convictions that had been expunged. The author stated as part of his reason for bringing the bill "[e]ven after receiving an expungement, rehabilitated former offenders suffer lifelong discrimination in employment, housing and

travel. Not only is this unjust, it inevitably costs California millions of dollars in dealing with recidivism, unemployment, and under employment.” (Senate Public Safety Analysis of SB 530 (Wright) April 23, 2013))

At least one court has interpreted the exceptions to look at expunged records more broadly than was intended by SB 530. (*Frank Noori v. Vivint Inc.*) The court allowed an employer to look at all expunged convictions if they were permitted to look at specific convictions, even if those expunged convictions were not one of the convictions specified. This bill clarifies this by stipulating that an employer can only consider “particular” convictions when rejecting applicants.

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