

RESOLUTION 02-05-2016

DIGEST

Labor: Prohibiting Private Employers from Asking About Prior Convictions in Applications
Amends Labor Code section 432.9 to prohibit private employers from asking about past convictions in employment applications.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Labor Code section 432.9 to read as follows:

§432.9

- 1 (a) A state agency, ~~or~~ local agency, or private employer shall not ask an applicant for
- 2 employment to disclose, orally or in writing, information concerning the conviction history of
- 3 the applicant, including any inquiry about conviction history on any employment application,
- 4 until the agency has determined the applicant meets the minimum employment qualifications, as
- 5 stated in any notice issued for the position.
- 6 (b) This section shall not apply to a position for which a state agency, ~~or~~ local agency, or
- 7 private employer is otherwise required by law to conduct a conviction history background check,
- 8 to any position within a criminal justice agency, as that term is defined in Section 13101 of the
- 9 Penal Code, or to any individual working on a temporary or permanent basis for a criminal
- 10 justice agency on a contract basis or on loan from another governmental entity.
- 11 (c) This section shall not be construed to prevent a state agency, ~~or~~ local agency, or
- 12 private employer from conducting a conviction history background check after complying with
- 13 all of the provisions of subdivision (a).
- 14 (d) As used in this section, “state agency” means any state office, officer, department,
- 15 division, bureau, board, commission, or agency.
- 16 (e) As used in this section, “local agency” means any county, city, city and county,
- 17 including a charter city or county, or any special district.
- 18 (f) Section 433 does not apply to this section.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: It is nearly impossible for a person with a criminal record to obtain employment and to become a productive member of society.

The Solution: As a part of the nationwide “Ban the Box” movement, California AB 218 went into effect in 2014. AB 218 (2013). AB 218 prohibits “a state or local agency from asking an applicant 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.” AB 218, Legislative Counsel’s Digest (2013).

AB 218's purpose and goals:

“The Legislature finds and declares that reducing barriers to employment for people who have previously offended, and decreasing unemployment in communities with concentrated numbers of people who have previously offended, are matters of statewide concern... The Legislature further finds and declares that, consistent with the 2011 Realignment Legislation addressing public safety, increasing employment opportunities for people who have previously offended will reduce recidivism and improve economic stability in our communities.” AB 218 § 1. (2013).

This resolution would extend AB 218's requirements and exceptions to the private sector. According to the National Employment Law Project (NELP), over 100 cities and counties have adopted ordinances to “Ban the Box,” and a total of 19 states have implemented laws to “Ban the Box.” nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide.

Another approach is to require the individual and the courts to expunge the record. *See, e.g.* Texas SB 144 (2011). However, this approach is not practical because it places a severe burden on each individual and on the court system as well. In order to increase employment opportunities, reduce recidivism, and improve economic stability in our communities in an efficient manner, it is time to extend CA AB 218 to the private sector.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION

AB 218, added by Stats. 2013, Ch. 699 (operative on July 1, 2014)

See Fact Sheet: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly-Incarcerated, The White House. Office of the Press Secretary (Nov. 2, 2015).

See City of San Francisco Ordinance 17-14 [Police, Administrative Codes – Considering Criminal History in Employment and Housing Decisions] (Feb. 3, 2014) (Prohibits questions about conviction history or unresolved arrests until after an employer has either conducted a live interview with the applicant, or made a conditional offer of employment to the applicant.)

See Los Angeles City Council, Special Meeting – Economic Development Committee, Item No. 14-0746 (Nov. 17, 2015) (to determine the feasibility of establishing a City of Los Angeles Fair Chance Initiative, or Ban the Box Policy).

AUTHOR AND/OR PERMANENT CONTACT: Catherine Rucker, 20 Azalea Place
Novato, CA 94949, Cell: 415-246-6647, catherinerucker@me.com

RESPONSIBLE FLOOR DELEGATE: Catherine Rucker

RESOLUTIONS COMMITTEE RECOMMENDATION

The CCBA's Resolutions Committee recommended Disapproval of this resolution. The full Conference narrowly rejected that recommendation and approved the resolution.

History:

No similar resolutions found.

COUNTERARGUMENTS

The **BAR ASSOCIATION OF NORTHERN SAN DIEGO COUNTY** also recommended Disapproval of the resolution.