

Date of Hearing: April 8, 2026

ASSEMBLY COMMITTEE ON LABOR AND EMPLOYMENT

Liz Ortega, Chair

AB 2095 (Lee) – As Introduced February 18, 2026

**SUBJECT:** Employment discrimination: conviction history

**SUMMARY:** Makes certain changes to the Fair Chance Act, including revising the list of practices that are unlawful for employers with five or more employees to undertake, adding requirements to the individualized assessment procedures, and altering certain exemptions. Specifically, **this bill:**

*Revises the list of practices that are unlawful for employers with five or more employees to undertake:*

- 1) Adds the following to the list of practices that are considered unlawful employment practices for an employer with five or more employees:
  - a) Including on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that indirectly seeks the disclosure of an applicant's conviction history or seeks consent for a conviction history background check.
  - b) Taking adverse action solely or in part because of the conviction history of the applicant until after the employer has made a conditional offer of employment to the applicant.
  - c) Requesting consent for or beginning a conviction history background check before providing the applicant with a list of all specific job duties of the position with which a conviction may have a direct and adverse relationship and potentially result in an adverse action.
  - d) Requiring a job applicant to cover the cost of a conviction history background check.
  - e) Seeking disclosure of or taking any adverse action solely or in part because of information about specified actions while conducting a conviction history background check in connection with an application for employment.
  - f) Requiring, at any time before or after the conditional job offer, that an applicant self-disclose conviction history or provide the employer with any documentary evidence related to conviction history or rehabilitation.
- 2) Adds convictions that have been expunged or have received automated conviction record relief to the list of things that employers are prohibited from seeking disclosure or considering, distributing or disseminating information about while conducting a conviction history background check in connection with any application for employment.

*Makes changes to the individualized assessment and procedures:*

- 3) Prohibits an employer from denying an applicant a position of employment or taking other adverse action solely or in part because of the applicant's conviction history unless the

employer first, reasonably and in good faith, complies, via an individualized assessment, that the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justifies denying the applicant the position and complies with a specified process.

- 4) Requires an employer, in making the individual assessment, to additionally consider the specific duties, rather than just the nature, of the job held or sought.
- 5) Establishes a rebuttable presumption that the relationship between the applicant's conviction and the position is not sufficiently direct and adverse to justify denying the applicant the position if either of the following apply:
  - a) The applicant has completed a sentence for the conviction of the crime. For purposes of this clause, completion of a sentence shall not require completion of parole, probation, supervised release, or any other form of supervision.
  - b) The applicant possesses a license, certificate, authorization, or any other similar credential from a licensing, regulatory, or other government agency or board that is required for the position.
- 6) Requires, rather than authorizes, an employer to commit the results of the individualized assessment to writing.
- 7) Deletes the provision that authorizes, but does not require, an employer to justify or explain the employer's reasoning for making a preliminary decision that the applicant's conviction history disqualifies the applicant from employment.
- 8) Adds to the list of things an employer is required to include in its notification of preliminary decision, an explanation of the employer's reasoning for making the preliminary decision, including a copy of the results of the individualized assessment.
- 9) Requires an employer to conduct a new individualized assessment after receiving from the applicant a response to the preliminary decision.
- 10) Requires, rather than authorizes, an employer to include in its notice of final decision to the applicant an explanation of the employer's reasoning for the denial or disqualification, as well as requires the employer to include a copy of the results of the updated individualized assessment described in (9) above.
- 11) Provides that it shall not be considered an adverse action for an employer to temporarily suspend an employee, with pay and for a reasonable amount of time, while the employer complies with the individualized assessment requirements.

*Alters the exempted circumstances:*

- 12) Revises the list of circumstances that are exempt from the Fair Chance Act in the following ways:
  - a) Deleting the exemption for a position as a farm labor contractor.

- b) Changing the exemption for positions for which a state or local agency is otherwise required by law to conduct a conviction history background check, to instead exempt positions *with* a state or local agency for which the agency is otherwise required by law to conduct a conviction history background check.
  - c) Removing the exemption for positions where an employer or agent thereof is required by any local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history.
- 13) Requires the Fair Chance Act to apply as follows to a position for which an employer or agent thereof is required by state or federal law to conduct a conviction history background check for employment purposes or to restrict employment based on conviction history:
- a) The employer may inquire about conviction history and seek consent for and conduct a conviction background check before a conditional job offer only if the employer simultaneously provides the applicant with a written notice stating that the position is covered by an exception, and listing the relevant laws and regulations forming the basis for the exception.
  - b) When taking an adverse action specifically required by state or federal law, the employer need not conduct the individualized assessment and shall instead notify the applicant, in writing, of the relevant law or regulation requiring the adverse action and allow the applicant to challenge the accuracy of the conviction history report as specified.

*Additional provisions:*

- 14) Provides that nothing in the Fair Chance Act shall be interpreted or applied so as to create any requirement, power, or duty in conflict with federal law.
- 15) Provides that the remedies under the Fair Chance Act shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any existing or future local ordinance that governs employer consideration of the arrest or conviction record of any job applicant or current employee.
- 16) Defines certain terms, including:
- a) “Applicant” to mean an individual seeking initial work, continued work, transfer, or promotion.
  - b) “Conditional job offer” to mean a written offer to work as an employee and includes offers for initial employment, transfer, or promotion.
- 17) Provides that the provisions of the Fair Chance Act are severable.

**EXISTING LAW:**

- 1) Establishes the Civil Rights Department (CRD) in the Business, Consumer Services, and Housing Agency to, among other things, receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful under specified state and federal laws prohibiting discrimination and protecting civil rights. Government Code § 12900 et seq.

- 2) Makes it an unlawful employment practice under the California Fair Employment and Housing Act (FEHA), except as specified, for an employer with 5 or more employees to 1) include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history, 2) to consider the conviction history of the applicant until after the employer has made a conditional offer of employment to the applicant, or 3) to distribute information about an arrest not followed by conviction, referral to or participation in a pretrial or posttrial diversion program, or convictions that have been sealed, dismissed, expunged, or statutorily eradicated or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation, while conducting a conviction history background check in connection with an application for employment, as specified. Government Code § 12952(a).
- 3) Requires an employer that intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history 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 that justify denying the applicant the position considering specified factors. Government Code § 12952(c).
- 4) Makes the provisions in (3) and (4) above inapplicable to a position as a farm labor contractor, as specified, or to a position where an employer or agent thereof 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(d).

**FISCAL EFFECT:** Unknown

**COMMENTS:** Note: this bill has been double referred to the Assembly Judiciary Committee upon passage out of this Committee.

Background on "Ban the Box" Policies:

"Ban the Box" policies refer to those that prohibit employers from asking about an applicant's criminal history on initial job applications, delaying background checks until later in the hiring process. Born out of the concern that many applicants are rejected as soon as it is discovered that they have a criminal history, these policies help provide applicants a fair chance at employment by allowing their qualifications to be considered first.

*"Ban the box" Legislation Around the Country*

Hawaii was the first state to pass "ban the box" policies in 1998. Today, 37 states and over 150 localities throughout the US have adopted some form of "ban the box" legislation.

On the federal level, in 2015, President Obama ordered all federal agencies to refrain from asking applicants about their convictions on their initial job application. In 2019, Congress passed and President Trump signed the National Defense Authorization Act (NDAA) for fiscal year 2020. The NDAA included the Fair Chance to Compete for Jobs Act of 2019, which prohibits federal agencies and contractors from requesting criminal background information from job applicants prior to extending an offer, with a few exceptions. Subsequently, in 2021,

President Biden issued an executive order calling for federal agencies to expand employment opportunities to candidates with arrest or conviction records.<sup>1</sup>

### *“Ban the Box” Legislation in California*

In 2013, the Legislature passed California’s first “ban the box” bill, AB 218 (Dickinson), which required that state and local agencies determine a job applicant’s minimum qualifications before obtaining and considering information regarding the applicant’s conviction history.

The following year, the Legislature passed and Governor signed AB 1650 (Jones-Sawyer, 2014), which required state contractors to determine an on-site construction-related job applicant's minimum qualifications before obtaining and considering information regarding the applicant's criminal conviction history.

Subsequently in 2018, California enacted what is known as the Fair Chance Act. This legislation expanded the state’s “ban the box” policies to the private sector by prohibiting employers with five or more employees from:

- Including on a job application any questions about conviction history before a conditional job offer has been made
- Asking about or considering an applicant’s criminal history before a conditional job offer has been made
- Considering information about arrests not followed by conviction, participation in pretrial or posttrial diversion programs that have been completed and the underlying pending charges or conviction dismissed, sealed, or eradicated, or convictions that have been sealed, dismissed, expunged, or statutorily eradicated.

The law operates within the FEHA, thereby treating improper criminal history screening as discrimination.

### Civil Rights Department Regulations:

The CRD is charged with enforcement of the Fair Chance Act and investigates complaints, audits job ads, and has secured multiple settlements, including large cases against employers for improper background check policies. In 2023 the CRD passed implementing regulations for the law, which expanded on the statute by creating more detailed requirements for employers.

Some legal analysts have argued that the CRD regulations extend beyond the original legislative text.<sup>2</sup> This bill would codify some of those discrepancies.

### Need for this Bill:

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<sup>1</sup> <https://www.federalregister.gov/documents/2021/06/30/2021-14127/diversity-equity-inclusion-and-accessibility-in-the-federal-workforce>

<sup>2</sup> “California Civil Rights Department (CRD) Ramps Up Enforcement of the California Fair Chance Act (CFCA).” Littler. <https://www.littler.com/news-analysis/asap/california-civil-rights-department-crd-ramps-enforcement-california-fair-chance>

Approximately 77 million Americans, or one in three adults, have some sort of criminal record. This includes around 8 million Californians, or one in five state residents.<sup>3</sup>

The author alleges that “People with conviction records continue to lack fair access to employment opportunities despite the Fair Chance Act. That law sought to reduce barriers to employment for individuals with conviction histories by limiting when and how employers can consider conviction records during the hiring process. However, many employers violate or circumvent the Fair Chance Act requirements, failing to delay background checks, ensure job-related justification for adverse decisions, and disregard sealed or expunged records. Additionally, shortcomings in the current law limit enforceability, leaving applicants unable to prove that their rights have been violated.”

According to the author, “This bill clarifies and bolsters the Fair Chance Act protections so that people who have turned their lives around have the opportunity to be gainfully employed, provide for their families, and contribute to their communities.”

### **Arguments in Support**

The Center for Employment Opportunities states in support that “Despite the gains of the California Fair Chance Act, discrimination in employment against people with convictions continues to be rampant. More than 7 million people in California have a conviction history, including 2.5 million working-age Californians with a felony conviction. The unemployment rate for people with convictions remains many times higher than the general unemployment rate. In fact, 60 percent of recently released formerly incarcerated people are likely jobless at the moment.

The Fair Chance Improvement Act would enable job applicants to secure a list of job duties, individualized assessment, and information on employer exemptions of the California Fair Chance, among other fixes, that would help ensure that the employer has a legitimate business need not to hire a top applicant. And if an employer decides not to hire an applicant, they will also have recourse through the fair chance process, which will allow them to submit evidence of rehabilitation, context about their convictions, and other important information.”

### **Arguments in Opposition**

A coalition of business organizations, including the California Chamber of Commerce, state in opposition that “AB 2095 disrupts the balance negotiated in California’s Fair Chance Act by creating a broad presumption that a conviction is not sufficiently job related if the applicant has completed a sentence or obtained a license or credential. This presumption effectively shifts the burden onto employers to overcome a default assumption that the conviction should not be considered disqualifying, even where the nature of the offense may raise legitimate workplace safety or risk concerns. This presumption applies regardless of the nature of the underlying offense and fails to account for circumstances in which certain convictions may be directly relevant to positions involving vulnerable populations such as children, access to sensitive environments, or safety sensitive responsibilities. By pre-judging the outcome of an individualized assessment, AB 2095 undermines the intent of California’s Fair Chance Act and

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<sup>3</sup> CSI's Data Dashboard. <https://www.cleanslateinitiative.org/data>

creates increased litigation exposure for employers who make good faith safety-based hiring decisions.”

### **Prior Legislation**

AB 2845 (Bonta), Chapter 824, Statutes of 2018, among other things, made it unlawful for any employer to consider, distribute, or disseminate information about a conviction for which a person has received a full pardon or been issued a certificate of rehabilitation.

AB 1008 (McCarty), Chapter 789, Statutes of 2017, prohibited employers with five or more employees from asking about conviction history before making a conditional job offer.

AB 1650 (Jones-Sawyer), Chapter 880, Statutes of 2014, provided that state contractors must determine an on-site construction-related job applicant's minimum qualifications before obtaining and considering information regarding the applicant's criminal conviction history.

AB 218 (Dickinson), Chapter 699, Statutes of 2013, prohibited a state or local agency from asking an employment applicant to disclose information concerning the applicant's conviction history until the agency has determined the applicant meets the minimum employment qualifications as stated in any notice issued for the employment position. Exempts employment positions for which a state or local agency is required by law to conduct a conviction history background check, criminal justice agency positions, and individuals working for a criminal justice agency on a contract basis or on loan from another governmental entity.

SB 530 (Wright), Chapter 721, Statutes of 2013, provided that a potential employer may not ask for, seek, or utilize as a factor in determining any condition of employment, information about a conviction that has been judicially dismissed or ordered sealed, as specified.

### **REGISTERED SUPPORT / OPPOSITION:**

#### **Support**

A New Way of Life Reentry Project  
All of US or None  
Anti-Recidivism Coalition  
Bay Area Legal Aid  
California Coalition for Worker Power  
California Employment Lawyers Association  
California for Safety and Justice  
California Immigrant Policy Center  
California Rural Legal Assistance  
Center for Employment Opportunities  
CFT– a Union of Educators & Classified Professionals, AFT, AFL-CIO  
Communities United for Restorative Youth Justice  
Community Legal Services in East Palo Alto  
Ella Baker Center for Human Rights  
Equal Justice Society  
Latino Justice Puerto Rican Legal Defense Education Fund  
Legal Aid Foundation of Los Angeles  
Legal Services for Prisoners With Children  
Legal Services of Northern California

Mental Health Advocacy Services  
Rubicon Programs  
Circle of Success  
Starting Over INC.  
Starting Over Strong  
Unapologetically Hers  
Vera Institute of Justice  
Worksafe

**Opposition**

American Petroleum and Convenience Store Association  
California Apartment Association  
California Association of Sheet Metal & Air Conditioning Contractors National Association  
California Bankers Association  
California Chamber of Commerce  
California Hospital Association  
California Landscape Contractors Association  
California Restaurant Association  
California's Credit Unions  
Housing Contractors of California  
Los Angeles Area Chamber of Commerce  
National Federation of Independent Business  
Official Police Garages of Los Angeles  
Society for Human Resource Management California

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