

Date of Hearing: April 14, 2026

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 2095 (Lee) – As Introduced February 18, 2026

SUBJECT: EMPLOYMENT DISCRIMINATION: CONVICTION HISTORY

KEY ISSUE: SHOULD THE FAIR CHANCE ACT, WHICH LIMITS AN EMPLOYER'S ABILITY TO REJECT AN APPLICANT DUE TO THE APPLICANT'S "CONVICTION HISTORY," BE STRENGTHENED, IN PART, BY CREATING A REBUTTABLE PRESUMPTION THAT THE CONVICTION IS NOT ADVERSE TO THE SPECIFIC DUTIES OF THE JOB?

SYNOPSIS

The Fair Chance Act, within the Fair Employment and Housing Act (FEHA), makes it an unlawful employment practice for an employer to ask questions about an applicant's conviction history before making a conditional offer of employment. In addition, an employer that intends to deny an applicant a position of employment solely or, in part, because of the applicant's conviction history must make an "individualized assessment" of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job, such that it would justify denying the applicant the position. The Fair Chance Act applies to any employer with five or more employees, although existing law does not apply to a position as a farm labor contractor or where the employer is required by local, state, or federal law to conduct criminal background checks for employment purposes.

This bill seeks to strengthen the Fair Chance Act in several ways. For example, the bill clarifies that an employer cannot ask any question that directly "or indirectly" seeks conviction history or request consent to conduct a criminal background check, unless the applicant is provided with a list of specific job duties, and an explanation of how a conviction for a particular crime might adversely affect the applicant's ability to perform those duties. The bill also prohibits requiring the applicant to pay for the cost of the criminal background check.

Of particular concern to the opponents, the bill modifies the "individualized assessment" process to create a rebuttable presumption that the relationship between the job duties and the applicant's conviction history is not sufficiently direct to justify rejecting the applicant if either of the following are true: (1) the applicant has completed a sentence for the crime, or (2) the applicant possesses a license, certificate, or other credential issued by a government agency or other board. The bill makes other changes designed to better document and explain the reasoning behind the individualized assessment. Finally, the bill not only requires an individualized assessment for rejecting an applicant for employment; it also requires an individualized assessment for any "adverse action," which is not defined. The bill apparently extends the law to current employees by defining an "applicant" to mean an individual "seeking initial work, continued work, transfer, or promotion."

The bill is supported by several legal aid, labor, and human rights groups who believe that people who have paid their debt to society should have the opportunity to be gainfully employed, provide for their families, and contribute to their community. The bill is opposed by several employer groups who believe that the bill is administratively burdensome and will expose

employers to liability. The bill recently passed out of the Assembly Labor Committee on a 5-2 vote.

SUMMARY: Makes several changes to the Fair Chance Act, such as revising the list of practices that are unlawful for employers, adding requirements to the individualized assessment procedures, and modifying existing exemptions. Specifically, **this bill:**

- 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 similarly modified to the list of things that employers cannot inquire about or cannot consider while conducting a conviction history background check of an applicant.
- 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, conducts an individualized assessment and concludes that applicant's conviction history has a direct and adverse relationship with the specific duties of the job.
- 4) Requires an employer, in conducting the individual assessment, to 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 permits, an employer to commit the results of the individualized assessment to writing.
 - 7) 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.
 - 8) Requires an employer to conduct a new individualized assessment after receiving from the applicant a response to the preliminary decision.
 - 9) Requires, rather than permits, 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 and to include a copy of the results of the updated individualized assessment.
 - 10) 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.
 - 11) Deletes the existing exemption for a position as a farm labor contractor.
 - 12) Modifies the exemption for positions for which an employer is required by local, state, or federal law to conduct a conviction history background check for employment purposes, as specified.
 - 13) 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.
 - 14) 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.

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 Section 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 (a) 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; (b) consider the conviction history of the applicant until after the employer has made a conditional offer of employment to the applicant, or (c) 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, pardoned, or otherwise eradicated. (Government Code Section 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 Section 12952 (c).)
- 4) Makes the provisions above inapplicable to a position as a farm labor contractor, as specified, or to 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 Section 12952 (d).)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: According to the author:

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 disregarded sealed or expunged records. Additionally, shortcomings in the current law limit enforceability, leaving applicants unable to prove that their rights have been violated. 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.

“Ban the Box” and beyond. Between 2013 and 2017, the Legislature enacted three significant pieces of legislation that sought to allow persons convicted of crimes to successfully reenter society after they had been released from prison or had otherwise served their sentence. Perhaps there is nothing so essential to the successful reentry to society for a formerly incarcerated person as obtaining employment. Unfortunately, having a criminal record makes obtaining employment exceedingly difficult. As is often the case, the Legislature moved to address this problem in a piecemeal fashion. AB 218 (Dickinson) Chap. 699, Stats. 2013, prohibited a state or local agency from asking an applicant for employment questions about the applicant's conviction history, at least before the agency has determined the applicant meets the minimum employment qualifications. The bill exempted employment positions for which a state or local agency was required by law to conduct a conviction history background check, or where persons with criminal records were barred from positions in a criminal justice agency. SB 530 (Wright) Chap. 721, Stats. 2013, prohibited a potential employer asking about, or basing a rejection upon, a conviction that had been judicially dismissed.

Four years later, AB 1008 (McCarty) Chap. 789, Stats. 2017, created the California Fair Chance Act; that bill extended AB 218, which applied only to public employers, to include all employers with five or more employees (subject to certain exceptions) from asking about conviction history before making a conditional job offer. AB 1008 also required an employer who intended to reject an applicant, solely or in part because of the applicant's conviction history, to make an "individualized assessment" of whether the applicant's conviction history had a direct and adverse relationship to the specific job duties. Finally, AB 1008 required the employer to provide the applicant with written notice, and gave the applicant five business days to respond to the notice before the employer could make the final decision. If the applicant disputed the accuracy of the conviction history, the applicant had an additional five business days to respond to the notice.

This bill seeks to strengthen the Fair Chance Act in several ways. For example, the bill clarifies that an employer cannot ask any question that directly *or indirectly* seeks conviction history or requests consent to conduct a criminal background check before the applicant is provided with a list of specific job duties and an explanation of how a conviction for a particular crime might adversely affect the applicant's ability to perform those duties. The bill also prohibits requiring the applicant to pay for the cost of the criminal background check.

The bill significantly modifies the "individualized assessment" process by creating a rebuttable presumption that the relationship between the job duties and the applicant's conviction history is not sufficiently direct to justify rejecting the applicant, if either of the following are true: (1) the applicant has completed a sentence for the crime, or (2) the applicant possesses a license, certificate, or other credential issued by a government agency or authorized board. The bill makes other changes requiring the employer to better document and explain the reasoning behind the individualized assessment. Finally, the bill not only requires individualized assessment for rejecting an applicant for employment; it also requires an individualized assessment for "adverse action." The bill extends the law to current employees by defining an "applicant" to mean an individual "seeking initial work, continued work, transfer, or promotion."

Opposition concerns. The bill is opposed by several groups that represent employers, banks, credit unions, and other business enterprises. They complain that the bill imposes additional administrative burdens and makes an already complex and ambiguous set of requirements even more complex and ambiguous. Opponents note, for example, that by defining "applicant" to include not only the person initially seeking work, but also a person seeking "continued work, transfer, or promotion," employers may need to repeat the individualized assessment on an ongoing basis. In addition, existing law gives an applicant five days to respond to the assessment notice and an additional five days to respond if they contest factual information about their conviction history. This bill would extend the latter period from five to ten days, expanding the total time that the employer must wait before selecting a person for the position from ten days to fifteen days.

Opponents seem especially concerned, however, about the rebuttable presumption that the conviction does *not* have a direct and adverse relation to the job duties. This, they claim, unfairly shifts the burden to the employer to overcome the presumption and prove that the conviction raises legitimate workplace safety concerns. Employers, of course, have good reasons for being wary of hiring persons who have been convicted of a crime. Even where no state or federal law requires an employer to conduct a criminal background check, the tort doctrine of "negligent hiring" means that an employer can be held liable for harms an employee inflicts upon a third

party, if the employer failed to conduct a reasonable background check or knew or should have known that the employee posed a risk in that role. (See Judicial Council of California, Civil Jury Instruction No. 426.)

It is certainly true that a rebuttable presumption puts the employer in something of a bind: they cannot reject an applicant based on conviction history unless they overcome the presumption that the criminal conviction is *not* adversely related to the job duties, but they can be liable for negligent hiring if the background check is deemed not “reasonable” or if a judge or jury believes that the employer “should have known” that the employee posed a risk. However, while this bind real enough, it is not entirely clear that the rebuttable presumption changes existing law as much as the opponents (or the supporters) think it does. Under existing law, after all, an employer cannot simply assume that a criminal conviction makes someone unfit for a job; rather, the employer must make an individualized assessment that there is a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position considering specified factors. (Government Code Section 12952 (c).) In short, a rebuttable presumption requires the employer to show, rather than assume, that there is a direct and adverse relationship between the nature of the conviction and the job duties.

ARGUMENTS IN SUPPORT: The Ella Baker Center for Human Rights supports AB 2095 because it will “allow people with a conviction history to apply for jobs with the confidence that they will be evaluated based on their skills, experience, and fitness for the job, like any other applicant.” The Ella Baker Center continues:

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.

AB 2095 will help guide employers on how to conduct the currently required individualized assessment, by requiring them to identify and provide a list of job duties to employees. Under current law, the employer must provide an individualized assessment, which prohibits the employer from taking an adverse employment action against an employee or job applicant based on a conviction record unless it is sufficiently related to the job. AB 2095 would clarify that the employer must demonstrate “business necessity” for taking the adverse action and require that the individualized assessment be provided in writing to the applicant. AB 2095 will also require employers to provide a notification to applicants if they believe they are exempt from background checks, while also requiring all employers to go through the fair chance process, which would allow applicants to submit letters of rehabilitation and correct mistakes in their background checks.

ARGUMENTS IN OPPOSITION: The California Chamber of Commerce, on behalf of itself and several associations representing employers, oppose this bill. While the Chamber coalition expresses appreciation of the author’s intent to provide clarity regarding employer obligations, they nonetheless believe that “AB 2095 creates additional ambiguity and litigation risk for employers attempting to comply with an already complex statutory framework governing the use of conviction history in employment decisions.” To begin with, the Chamber coalition believes

that the bill “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.” More generally, the Chamber coalition believes that the bill creates new administrative and operational burdens, including extended mandatory review periods for applicants with a conviction history, which “will further prolong hiring timelines and increase administrative costs, creating significant operational challenges for employers, particularly small businesses, when timely hiring is necessary to maintain business continuity.” Finally, the Chamber coalition argues that certain definitional ambiguities in the bill will increase the risk and cost of litigation.

Related pending legislation. The Committee is also scheduled to hear AB 2064 (Sharp-Collins, 2026). Like this bill, AB 2064 seeks to protect persons from discrimination on the basis of criminal history, and the letters of support indicate that employment discrimination is a significant, but by no means the only, concern. While AB 2095 (Lee) seeks to prohibit discrimination in employment in a more focused manner strengthening the existing Fair Chance Act, as discussed above, AB 2064 adds “criminal history” to the list of “protected characteristics” in both the employment and housing provisions of FEHA, as well as in the Unruh Civil Rights Act.

REGISTERED SUPPORT / OPPOSITION:

Support

New Way of Life
A New Way of Life Reentry Project
All of US or None (HQ)
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
Californians for Safety and Justice
Center for Employment Opportunities
Center for Living and Learning
CFT – a Union of Educators & Classified Professionals
Communities United for Restorative Youth Justice
Community Legal Services in East Palo Alto
Cure California
East Bay Community Law Center
Ella Baker Center for Human Rights
Equal Justice Society
For the People
Inland Region Reentry Collaborative
Jesse's Place Organization
Jireh Shalom Foundation

Latino Justice Puerto Rican Legal Defense Education Fund
Legal Aid At Work
Legal Aid Foundation of Los Angeles
Legal Services for Prisoners With Children
Legal Services of Northern California
Los Angeles Regional Reentry Partnership (LARRP)
Mental Health Advocacy Services
National Employment Law Project
REDF
Rising Scholars Network
Rubicon Programs
Ruchell Cique Magee Community Land Trust Riverside
San Jose State University Record Clearance Project
Santa Clara County Wage Theft Coalition
Sircle of Success
Southeast Asia Resource Action Center
Starting Over INC.
The Place4grace
UC Berkeley's Underground Scholars Initiative (USI)
Unapologetically Hers
Underground Scholars Initiative
Vera Institute of Justice
Western Center on Law and Poverty
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
SHRM California

Other

Neighborhood Legal Services of Los Angeles County

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