

ASSEMBLY THIRD READING

AB 2095 (Lee)

As Amended May 18, 2026

Majority vote

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 removing the exemption for a position as a farm labor contractor.

Major Provisions

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 any 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 essential job duties.
 - i) Authorizes an employer to convey the list through a job posting.
 - 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 received automated conviction record relief, as well as any court dispositions that occurred while the person was subject to the process or jurisdiction of the juvenile court, 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 any adverse action solely or in part because of the applicant's conviction history unless the employer first, reasonably and in good faith, demonstrates, 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) Requires, rather than authorizes, an employer to commit the results of the individualized assessment to writing, and only if the employer makes a decision to deny a position of employment or takes any adverse action.
- 6) 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 the position.
- 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 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 (8) above.
- 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.

Alters the exempted circumstances:

- 11) Deletes the exemption from the Fair Chance Act for a position as a farm labor contractor.

Additional provisions:

- 12) 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.
- 13) 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.

14) Provides that the provisions of the Fair Chance Act are severable.

COMMENTS

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.¹

"Ban the Box" Legislation in California

In 2013, the Legislature passed California's first "ban the box" bill, AB 218 (Dickinson), Chapter 699 Statutes of 2013 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) Chapter 880, Statutes of 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:

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

- 1) Including on a job application any questions about conviction history before a conditional job offer has been made
- 2) Asking about or considering an applicant's criminal history before a conditional job offer has been made
- 3) 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.² This bill would codify some of those discrepancies.

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 disregard 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."

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.

² "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>

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 imposes substantial new procedural requirements beyond current law, including requiring employers to identify and provide a list of job duties that may create a direct relationship with potential disqualifying convictions before obtaining consent for a background check. This front-loaded compliance obligation requires employers to conduct legal analysis much earlier in the hiring process, increasing administrative complexity and the likelihood of technical violations. Businesses, particularly small businesses, simply do not have the staff, resources, or legal expertise to conduct an exhaustive legal review of how each job task for each position could be implicated by a myriad of convictions. The propensity for error is highly likely.

AB 2095 would also require employers to commit the findings from an individualized assessment to a writing. That undoes original negotiations of the California Fair Chance Act where stakeholders and legislators were concerned about liability, especially for smaller businesses with no legal counsel."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Costs of an unknown amount to the state as an employer to comply with expanded Act requirements (General Fund (GF) or special fund). The magnitude of costs depends on how many applicants have a conviction history and how similar the state's existing practices regarding individualized assessments are to this bill's requirements.

Similarly, potentially significant costs to local government employers, which the state would not need to reimburse because this bill's new requirements for local agencies equally apply to the private sector.

- 2) Ongoing costs of an unknown amount to the Civil Rights Department (CRD) if additional staff positions are needed to investigate, mediate, and litigate new complaints alleging a violation of the Act (GF). Additionally, CRD estimates costs of approximately \$10,000 to update CRD's interactive guide for the Act and workload costs to promulgate new regulations.
- 3) By expanding what constitutes an unlawful employment practice enforceable by CRD, this bill may result in new civil actions filed by CRD against an employer, thus increasing cost pressures of an unknown amount to the state court system (Trial Court Trust Fund). However, the magnitude of such actions is likely small, as CRD has an extensive process to attempt to resolve complaints prior to bringing a civil action.

VOTES

ASM LABOR AND EMPLOYMENT: 5-2-0

YES: Ortega, Elhawary, Kalra, Lee, Ward

NO: Lackey, Chen

ASM JUDICIARY: 7-3-2

YES: Kalra, Bryan, Connolly, Harabedian, Pacheco, Stefani, Zbur

NO: Macedo, Dixon, Sanchez

ABS, ABST OR NV: Bauer-Kahan, Papan

ASM APPROPRIATIONS: 11-4-0

YES: Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

NO: Hoover, Dixon, Ta, Tangipa

UPDATED

VERSION: May 18, 2026

CONSULTANT: Erin Hickey / L. & E. / (916) 319-2091

FN: 0003015