

ASSEMBLY BILL

No. 971

Introduced by Assembly Member Garcia

February 22, 2013

An act to amend Section 15975 of the Government Code, and to amend Section 432.7 of the Labor Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 971, as introduced, Garcia. Contracts and applications for employment: paratransit services.

Existing law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, except as specified. Existing law authorizes a health care facility, as defined, to ask an applicant for employment to disclose an arrest for specified offenses, including offenses specified in the sex offender registration statute.

Existing law requires the Attorney General to furnish state summary criminal history information to a city, county, city and county, or district, or an officer or official thereof, when that information is needed in fulfilling employment, certification, or licensing duties, as specified, subject to specified restrictions as to arrests or detentions that did not result in a conviction. Other provisions of existing law authorize the Attorney General to provide summary criminal history information to specified persons or entities for specified purposes. Existing law provides a similar provision with respect to authorizing a local public entity to receive local criminal history information.

This bill would authorize a specified social services paratransit agency to require its service contractors, as specified, to ask applicants for employment with regular access to persons with disabilities to disclose arrests for offenses specified in the sex offender registration statute. The bill would also authorize that agency to receive specified state and local criminal history information. The bill would, in addition, authorize a service contractor of a paratransit agency, as specified, to ask applicants for employment with regular access to persons with disabilities to disclose arrests for offenses specified in the sex offender registration statute, if required by the paratransit agency to do so. The bill would further make technical, nonsubstantive, and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15975 of the Government Code is
2 amended to read:
3 15975. (a) The transportation planning agencies and the county
4 transportation commissions shall prepare and adopt an action plan
5 that describes in detail the steps required to accomplish the
6 consolidation of social service transportation services. Funding
7 for the action plan shall be provided from local transportation funds
8 made available under Chapter 4 (commencing with Section 99200)
9 of Part 11 of Division 10 of the Public Utilities Code. The action
10 plan shall substantiate that one or more of the benefits indicated
11 in Sections 15951 and 15952 are feasible for the services in a given
12 geographic area. The action plan shall include, but not be limited
13 to, the following:
14 (a)
15 (1) The designation of consolidated transportation service
16 agencies within the geographic area of jurisdiction of the
17 transportation planning agency or county transportation
18 commission. The action plan may designate more than a single
19 agency or multiple agencies as consolidated transportation service
20 agencies, if improved coordination of all services is demonstrated
21 within the geographic area. In Ventura County, the county
22 transportation commission is the consolidated transportation service
23 agency.

1 The action plan may also specify that the consolidation of some
2 services and the coordination of other services is the most feasible
3 approach, at the time the action plan is submitted, which will
4 provide improved efficiency and effectiveness of those services.

5 (b)

6 (2) The identification of the social service recipients to be
7 served, of funds available for use by the consolidated or
8 coordinated services, and of an orderly strategy and schedule
9 detailing the steps required to develop the financial program and
10 management structure necessary to implement consolidated or
11 coordinated services.

12 (c)

13 (3) Measures to coordinate the services provided under
14 ~~subdivision (a) paragraph (1)~~ with existing fixed route service
15 provided by public and private transportation providers.

16 (d)

17 (4) Measures for the effective coordination of specialized
18 transportation service from one provider service area to another.

19 (e)

20 (5) Measures to ensure that the objectives of the action plan are
21 consistent with the legislative intent declared in Section 15951.

22 (f)

23 (b) An entity formed by the regional transportation planning
24 authority as a nonprofit public benefit corporation, designated as
25 a consolidated transportation services agency under this section
26 and charged with administering a countywide coordinated
27 paratransit plan adopted pursuant to Section 37.141 of Chapter 49
28 of the Code of Federal Regulations shall, for the purposes of
29 paragraph (2) of subdivision (e) of Section 14055 and Part 1
30 (commencing with Section 810) and Part 2 (commencing with
31 Section 814) of Division 3.6, be deemed a “public agency” within
32 the meaning of “public entity,” as defined in Section 811.2.

33 SEC. 2. Section 432.7 of the Labor Code is amended to read:

34 432.7. (a) ~~No~~An employer, whether a public agency or private
35 individual or corporation, ~~shall~~ *may not* ask an applicant for
36 employment to disclose, through any written form or verbally,
37 information concerning an arrest or detention that did not result
38 in conviction, or information concerning a referral to, and
39 participation in, any pretrial or posttrial diversion ~~program, nor~~
40 ~~shall any program.~~ An employer *may not* seek from any source

1 whatsoever, or utilize, as a factor in determining any condition of
2 employment including hiring, promotion, termination, or any
3 apprenticeship training program or any other training program
4 leading to employment, any record of arrest or detention that did
5 not result in conviction, or any record regarding a referral to, and
6 participation in, any pretrial or posttrial diversion program. As
7 used in this section, a conviction shall include a plea, verdict, or
8 finding of guilt regardless of whether sentence is imposed by the
9 court. Nothing in this section shall prevent an employer from
10 asking an employee or applicant for employment about an arrest
11 for which the employee or applicant is out on bail or on his or her
12 own recognizance pending trial.

13 (b) Nothing in this section shall prohibit the disclosure of the
14 information authorized for release under Sections 13203 and 13300
15 of the Penal Code, to a government agency employing a peace
16 officer. However, the employer shall not determine any condition
17 of employment other than paid administrative leave based solely
18 on an arrest report. The information contained in an arrest report
19 may be used as the starting point for an independent, internal
20 investigation of a peace officer in accordance with Chapter 9.7
21 (commencing with Section 3300) of Division 4 of Title 1 of the
22 Government Code.

23 (c) In any case where a person violates this section, or Article
24 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part
25 4 of the Penal Code, the applicant may bring an action to recover
26 from that person actual damages or two hundred dollars (\$200),
27 whichever is greater, plus costs, and reasonable attorney's fees.
28 An intentional violation of this section shall entitle the applicant
29 to treble actual damages, or five hundred dollars (\$500), whichever
30 is greater, plus costs, and reasonable attorney's fees. An intentional
31 violation of this section is a misdemeanor punishable by a fine not
32 to exceed five hundred dollars (\$500).

33 (d) The remedies under this section shall be in addition to and
34 not in derogation of all other rights and remedies that an applicant
35 may have under any other law.

36 (e) Persons seeking employment or persons already employed
37 as peace officers or persons seeking employment for positions in
38 the Department of Justice or other criminal justice agencies as
39 defined in Section 13101 of the Penal Code are not covered by
40 this section.

1 (f) Nothing in this section shall prohibit an employer at a health
2 facility, as defined in Section 1250 of the Health and Safety Code,
3 from asking an applicant for employment either of the following:

4 (1) With regard to an applicant for a position with regular access
5 to patients, to disclose an arrest under any section specified in
6 Section 290 of the Penal Code.

7 (2) With regard to an applicant for a position with access to
8 drugs and medication, to disclose an arrest under any section
9 specified in Section 11590 of the Health and Safety Code.

10 (g) (1) ~~No~~A peace officer or employee of a law enforcement
11 agency with access to criminal offender record information
12 maintained by a local law enforcement criminal justice agency
13 ~~shall~~ *may not* knowingly disclose, with intent to affect a person's
14 employment, any information contained therein pertaining to an
15 arrest or detention or proceeding that did not result in a conviction,
16 including information pertaining to a referral to, and participation
17 in, any pretrial or posttrial diversion program, to any person not
18 authorized by law to receive that information.

19 (2) ~~No other~~A person authorized by law to receive criminal
20 offender record information maintained by a local law enforcement
21 criminal justice agency ~~shall~~ *may not* knowingly disclose any
22 information received therefrom pertaining to an arrest or detention
23 or proceeding that did not result in a conviction, including
24 information pertaining to a referral to, and participation in, any
25 pretrial or posttrial diversion program, to any person not authorized
26 by law to receive that information.

27 (3) ~~No~~A person, except those specifically referred to in Section
28 1070 of the Evidence Code, ~~who~~ knowing he or she is not *a person*
29 authorized by law to receive ~~or possess~~ criminal ~~justice records~~
30 *offender record* information maintained by a local law enforcement
31 criminal justice agency, pertaining to an arrest or other proceeding
32 that did not result in a conviction, including information pertaining
33 to a referral to, and participation in, any pretrial or posttrial
34 diversion program, ~~shall~~ *may not* receive or possess that
35 information.

36 (h) "A person authorized by law to receive ~~that~~ *criminal offender*
37 *record* information," for purposes of this section, means any person
38 or public agency authorized by a court, statute, or decisional law
39 to receive information contained in criminal offender records
40 maintained by a local law enforcement criminal justice agency,

1 and includes, but is not limited to, those persons set forth in Section
2 11105 of the Penal Code, and any person employed by a law
3 enforcement criminal justice agency who is required by that
4 employment to receive, analyze, or process criminal offender
5 record information.

6 (i) Nothing in this section shall require the Department of Justice
7 to remove entries relating to an arrest or detention not resulting in
8 conviction from summary criminal history records forwarded to
9 an employer pursuant to law.

10 (j) As used in this section, “pretrial or posttrial diversion
11 program” means any program under Chapter 2.5 (commencing
12 with Section 1000) or Chapter 2.7 (commencing with Section
13 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
14 13352.5 of the Vehicle Code, or any other program expressly
15 authorized and described by statute as a diversion program.

16 (k) (1) Subdivision (a) shall not apply to any city, city and
17 county, county, or district, or any officer or official thereof, in
18 screening a prospective concessionaire, or the affiliates and
19 associates of a prospective concessionaire for purposes of
20 consenting to, or approving of, the prospective concessionaire’s
21 application for, or acquisition of, any beneficial interest in a
22 concession, lease, or other property interest.

23 (2) For purposes of this subdivision the following terms have
24 the following meanings:

25 (A) “Screening” means a written request for criminal history
26 information made to a local law enforcement agency.

27 (B) “Prospective concessionaire” means any individual, general
28 or limited partnership, corporation, trust, association, or other
29 entity that is applying for, or seeking to obtain, a public agency’s
30 consent to, or approval of, the acquisition by that individual or
31 entity of any beneficial ownership interest in any public agency’s
32 concession, lease, or other property right whether directly or
33 indirectly held. However, “prospective concessionaire” does not
34 include any of the following:

35 (i) A lender acquiring an interest solely as security for a bona
36 fide loan made in the ordinary course of the lender’s business and
37 not made for the purpose of acquisition.

38 (ii) A lender upon foreclosure or assignment in lieu of
39 foreclosure of the lender’s security.

1 (C) “Affiliate” means any individual or entity that controls, or
2 is controlled by, the prospective concessionaire, or who is under
3 common control with the prospective concessionaire.

4 (D) “Associate” means any individual or entity that shares a
5 common business purpose with the prospective concessionaire
6 with respect to the beneficial ownership interest that is subject to
7 the consent or approval of the city, county, city and county, or
8 district.

9 (E) “Control” means the possession, direct or indirect, of the
10 power to direct, or cause the direction of, the management or
11 policies of the controlled individual or entity.

12 (f) (1) Nothing in subdivision (a) shall prohibit a public agency,
13 or any officer or official thereof, from denying consent to, or
14 approval of, a prospective concessionaire’s application for, or
15 acquisition of, any beneficial interest in a concession, lease, or
16 other property interest based on the criminal history information
17 of the prospective concessionaire or the affiliates or associates of
18 the prospective concessionaire that show any criminal conviction
19 for offenses involving moral turpitude. Criminal history
20 information for purposes of this subdivision includes any criminal
21 history information obtained pursuant to Section 11105 or 13300
22 of the Penal Code.

23 (2) In considering criminal history information, a public agency
24 shall consider the crime for which the prospective concessionaire
25 or the affiliates or associates of the prospective concessionaire was
26 convicted only if that crime relates to the specific business that is
27 proposed to be conducted by the prospective concessionaire.

28 (3) Any prospective concessionaire whose application for
29 consent or approval to acquire a beneficial interest in a concession,
30 lease, or other property interest is denied based on criminal history
31 information shall be provided a written statement of the reason for
32 the denial.

33 (4) (A) If the prospective concessionaire submits a written
34 request to the public agency within 10 days of the date of the notice
35 of denial, the public agency shall review its decision with regard
36 to any corrected record or other evidence presented by the
37 prospective concessionaire as to the accuracy or incompleteness
38 of the criminal history information utilized by the public agency
39 in making its original decision.

1 (B) The prospective concessionaire shall submit the copy or the
2 corrected record of any other evidence to the public agency within
3 90 days of a request for review. The public agency shall render its
4 decision within 20 days of the submission of evidence by the
5 prospective concessionaire.

6 *(m) (1) Nothing in this section shall prohibit a public entity*
7 *described in subdivision (b) of Section 15975 of the Government*
8 *Code from doing any of the following:*

9 *(A) Requesting or requiring its service providers who have*
10 *contracted with the public entity to provide paratransit services*
11 *to ask an applicant for employment with regular access to persons*
12 *with disabilities to disclose an arrest under any section specified*
13 *in Section 290 of the Penal Code.*

14 *(B) Receiving the disclosure of information authorized for*
15 *release to a government agency under Section 13300 of the Penal*
16 *Code.*

17 *(C) Receiving the disclosure of information authorized for*
18 *release under Section 11105 of the Penal Code.*

19 *(2) Nothing in this section shall prohibit a service provider*
20 *described in subparagraph (A) of paragraph (1) from asking an*
21 *applicant for employment with regular access to persons with*
22 *disabilities to disclose an arrest under any section specified in*
23 *Section 290 of the Penal Code, if requested or required by the*
24 *public entity to do so.*