

NOTICE OF TELECONFERENCE
GOVERNMENT & PUBLIC AFFAIRS COMMITTEE MEETING

August 27, 2019

12 p.m. until completion of business

One or more Committee Members will participate in this Meeting at the teleconference sites listed below. Each teleconference location is accessible to the public and the public will be given an opportunity to address the Government and Public Affairs Committee at each teleconference location. The public teleconference sites for this meeting are as follows:

Teleconference Meeting Locations:

901 P Street, Suite 142A
Sacramento, CA 95814
(916) 263-5355
(Board Staff)

Corey Lichtman, D.C.
Solana Beach Family and
Sports Chiropractic
538 Stevens Avenue,
Solana Beach, CA 92075
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Frank Ruffino, Public Member
901 P Street, Suite 142A
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(916) 263-5355

AGENDA

1. Call to Order
2. Review, Discussion and Possible Action Regarding AB 5 (Gonzalez) Worker Status: Employees and Independent Contractors
3. Review, Discussion and Possible Action Regarding AB 1076 (Ting) Criminal Records: Automatic Relief
4. Review, Discussion and Possible Action Regarding SB 53 (Wilk) Open Meetings
5. Review, Discussion and Possible Action Regarding SB 425 (Hill) Health Care Practitioners: Licensee's File: Probationary Physician's and Surgeon's Certificate: Unprofessional Conduct

6. Public Comment

Note: The Committee may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125, 122507(a).] Public comment is encouraged; however, if time constraints mandate, comments may be limited at the discretion of the Chair.

4. Items Not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda of a future meeting. [Government Code Sections 11125.]

5. Adjournment

Meetings of the Board of Chiropractic Examiners are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-5355 or access the Board's Web Site at www.chiro.ca.gov.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification to participate in the meeting may make a request by contacting the Board at (916) 263-5355 or e-mail chiro.info@dca.ca.gov or send a written request to the Board of Chiropractic Examiners, 901 P Street, Suite 142A, Sacramento, CA 95814. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

**Agenda Item 2
August 27, 2019**

**Review, Discussion and Possible Action Regarding AB 5 (Gonzalez) Worker
Status: Employees and Independent Contractors**

Purpose of the item

This agenda item has been included to provide the Committee with an update on AB 5 (Gonzalez).

Action(s) requested

N/A

Background

Board staff is monitoring and tracking several bills introduced during the current two-year legislative session.

AB 5 (Gonzalez) would codify the decision of the *California Supreme Court in Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018)* that presumes a worker is an employee unless a hiring entity satisfies a three-factor test (ABC) in order to lawfully classify a worker as an independent contractor. This bill would also expand the scope of Dynamex to include unemployment and other labor protections, and exempt specified occupations and professional services from the ABC test.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- AB 5 analysis and bill text

Board of Chiropractic Examiners Bill Analysis

Bill Number: AB 5
Author: Assembly Member Lorena Gonzalez
Bill Version: Amended July 11, 2019
Subject: Worker
Sponsor: California Labor Federation
Status of Bill: Held in Suspense in Appropriations. Set for hearing 08/30/2019

Summary:

This bill would codify the decision of the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) that presumes a worker is an employee unless a hiring entity satisfies a three-factor test (ABC) in order to lawfully classify a worker as an independent contractor. This bill would also expand the scope of *Dynamex* to include unemployment and other labor protections.

Existing Law:

- Establishes a comprehensive set of protections for employees, including a minimum wage, meal and rest periods, workers' compensation coverage in the event of an industrial injury sick leave, and disability insurance (DI) in the event of a non-industrial disability, paid family leave, and unemployment insurance (UI). (Labor Code §§ 201, 226.7, 246, 512, 1182.12 & 3600 and UC Code §§ 1251&2601).
- Creates the Industrial Welfare Commission (IWC), which promulgates industry-specific wage orders that set the wages, hours, and working conditions of employees. The IWC wage orders have the force of regulation and are enforced by the Division of Labor Standards Enforcement (DLSE). (Labor Code §§ 70, 1173, 1177, 1195 & 1197).
- Provides that there is a rebuttable presumption that a worker performing services for which a contractor's license is required is an employee rather than an independent contractor. (Labor Code § 2750.5)
- Requires, for the purposes of this analysis, a hiring entity to satisfy specified criteria in the Borello test, the primary California Supreme Court precedent, in order to lawfully classify a worker as an independent contractor. The factors in the Borello test include, but are not limited to, the right to discharge without cause, whether the worker performing services is engaged in a distinct occupation or business and the method of payment, whether by the time or the job. (*S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal. 3rd 341)
- Authorizes an employer to rebut the presumption described above if the hiring entity satisfies the following criteria:
 - a) The individual has the right to control the manner of performance of the contract for services in that the result of the work and not the means by which it is accomplished is the primary factor;

- b) The individual is customarily engaged in an independently established business.
- c) The individual's independent contractor status is bona fide and not a subterfuge to avoid employee status. A bona fide independent contractor status is evidenced by the presence of cumulative factors, which include substantial investment other than personal services in the business, control over the time and place the work is performed, holding out to be in business for oneself, and bargaining for a contract to complete a specific project for compensation by project rather than by time. (Labor Code § 2750.5)
- Requires that an individual holds a valid contractor's license as a condition of having independent contractor status (Labor Code § 2750.5)
- Requires, for the purposes of IWC wage orders, a hiring entity to satisfy the following circumstances included in the ABC test to lawfully classify a worker as an independent contractor:
 - a) The worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
 - b) The worker performs work that is outside the usual course of the hiring entity's business; and
 - c) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity. (*Dynamex Operations West v. Superior Court of Los Angeles* (2018) 4 Cal. 5th 903)

This Bill Would:

- Codify the recent decision in *Dynamex Operations West v. Superior Court of Los Angeles* (2018) (Dynamex), for the purposes of IWC wage orders, by overturning the California Supreme Court's decision in the Borello ruling.
- Expand the definition of "employee", for purposes of unemployment insurance provisions, to include workers who are defined as employees pursuant to the holding in Dynamex.
- Provides that, except where a statutory exemption from employment status or a statutory grant of employment status applies, for the purposes of the Labor Code, Unemployment Insurance and the IWC's wage orders, a person providing labor or services for remuneration shall be considered an employee unless the hiring entity demonstrates the ABC test was satisfied.
- Exempt specified occupations from the ABC test and instead require the employment relationship to be established by the Borello test. These occupations include but are not limited to: a) licensed insurance brokers; b) physicians and surgeons; c) investment advisors and securities broker-dealers; e) hairstylists and barbers; f) individuals performing work under a contract for professional services, as defined, with another business entity.
- Require the Borello test be applied to a contract for professional services if the hiring entity satisfies the following criteria, which includes but is not limited to:

- a) The individual maintains a business location, which may include the individual's residence, that is separate from the hiring entity.
- b) The individual has the ability to use their own employees in the completion of the work, where reasonable, and has the authority to hire and fire other persons who assist in providing the services. Nothing in this section requires an individual to hire an employee.
- c) Both the individual and the hiring entity have the ability to negotiate compensation for the services performed.
- d) Outside of project completion dates and reasonable business hours, the individual has the ability to set their own hours.
- e) For services that do not reasonably have to be performed at a specific location, the individual can determine where to perform the services under the contract.
- f) The individual is customarily engaged in the same type of work performed under the contract with another hiring entity or holds themselves out to other potential customers as available to perform the same type of work.
- Define professional services and would not include healthcare professionals except for podiatrists.
- Provide that relationships between a hiring entity and an individual performing work under a contract with another business entity are under the Borello test if all of the following criteria are satisfied:
 - a) The service provider is free from the control and direction of the contracting business entity in connection with the performance of the work.
 - b) The service provider is providing services to the contracting business rather than to customers of the contracting business.
 - c) The contract with the service provider is in writing.
 - d) If the work is performed in a jurisdiction that requires the service provider to have a business license or business tax registration, the service provider has the required business license or business tax registration.
 - e) The service provider maintains a business location that is separate from the business or work location of the contracting business.
 - f) The service provider is customarily engaged in an independently established business of the same nature as that involved in the work performed.
 - g) The service provider contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from the hiring entity.
 - h) The service provider advertises and holds itself out to the public as available to provide the same or similar services.
 - i) The service provider has no other financial relationships with the contracting business.
 - j) The service provider can negotiate its own rates, provided that the rate is equal or greater than two times the minimum wage for hours worked.
 - k) The service provider is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Section 7000 and following of the Business and Professions Code.
- Amend the existing labor law to address worker's compensation and the holding in Dynamex.

- Make findings and declarations on Dynamex, the negative consequences of misclassification, and states that this bill is not a change in the law with regard to the violations of the Labor Code relating to wage orders of the Industrial Welfare Commission.

Background:

According to the author's office:

In 2004, a misclassification lawsuit was filed against a package and document delivery company called Dynamex Operations West, a nationwide delivery service company which had converted all of its delivery drivers from employees of the company to independent contractors. Prior to 2004, all of the delivery drivers were employees solely to cut costs at the expense of its own workers. Drivers continued to perform the same job, were required to use their own vehicles and pay for all transportation expenses and uniforms without the protections afforded under the California Labor Code and wage orders.

In April 2018, the California Supreme Court issued the landmark decision in the Dynamex ruling which was in favor of the drivers and based its ruling on a three-part ABC test used to determine employment status.

Many companies have increasingly shifted toward a business model that relies on the misclassification of employees by forcing them to act as independent contractors and lose employee rights and protections while the employer maintains the right to set rates, direct work and impose discipline and control upon workers.

The Division of Labor Standards Enforcement (DLSE) estimates that the misclassification of workers results in an estimated annual loss of \$7 billion per year in payroll tax revenue to the state, that otherwise could have supported General Fund programs for public safety, education and infrastructure.

Fiscal Impact:

- BCE does not anticipate a fiscal impact to the fund due to this legislation. However, individual chiropractors who hire an employee or an independent contractor may need to seek legal services to ensure they comply with labor laws.

Support & Opposition:

Support:

Over 50 organizations support AB 5, including but not limited to:

- California Labor Federation (Sponsor)
- California Nurses Association
- National Association of Insurance and Financial Advisors of California
- SEIU CA
- SEIU Local 1000
- State Building and Construction Trades Council

Opposition:

Over 30 organizations oppose AB 5, including but not limited to:

- California Society for Respiratory Care
- California Trucking Association
- National Federation of Independent Business
- Electrologists' Association of California

Arguments:

Pro:

- The California Labor Federation, sponsor of this bill, states that the ABC test “prevents the common practice in many industries of a company forcing an individual to act as an independent business while the company maintains the right to set rates, direct work, and impose discipline. It distinguishes carefully between a trucking company that has no employee drivers (misclassification) and a trucking company that contracts with a mechanic (legitimate contractor). Bringing misclassified workers into employee status will mean more workers have a safety net when they are sick, laid off, or hurt at work.”
- State Building and Construction Trades Council (SBTC) argues that AB 5 would assist the Division of Labor Standards Enforcement hold law breaking contractors accountable and restore tax revenue for unemployment insurance, disability insurance and employer contributions to the workers' compensation system by preventing misclassification.
- SBTC also states this bill would protect law-abiding contractors from being at a competitive disadvantage given they would not be subject to the ABC test requirements.

- This bill would reinforce Labor Code protections for misclassified workers by expanding the definition of “employee” for purposes of unemployment insurance and labor code provisions.

Con:

- The National Federation of Independent Business (NFIB) expressed concern over the Dynamex ruling, which overturns the Borello test by establishing the stringent ABC test that is unworkable for every single business in a state and economy as diverse as California’s.
- The ABC test states that an independent contractor must work for an employer, but not in their client’s normal course of business. However, there is no clear provision in the bill regarding general guidelines for what constitutes a hiring entity’s “course of business”, which makes it prone to misinterpretation.

This bill would not only be detrimental to the interests of employers; it could have a significant economic impact on small businesses as more workers would be classified as employees rather than independent contractors. In those cases, it could be costly for small businesses to retain or hire more employees while complying with requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees’ rights and benefits.

- There is no provision in the bill addressing the fact that courts have the ability to apply the Dynamex ruling retroactively in wage and hour disputes given that the Supreme Court did not limit its ruling to prospective questions. The ABC test may spur litigation from employers and other parties questioning its validity.
- Dynamex focuses on a case-by-case analysis on each and every occupation, placing specific occupations, that in some cases need to meet explicit requirements, under the Borello test. Beyond the list of specified occupations, there is no clear reason as to why certain occupations and professional services are exempt from the ABC test and others are not. However, it appears that some of these occupations and professional services employ a higher proportion of contractors in California according to the UC Berkeley Labor Center.

Generally, the occupations that are exempt in this bill are not bound by minimum wages but are instead commission based, set and negotiate rates with clients for the work provided or establish a written contract between the worker and the hiring entity identifying the worker as a non-employee for state tax purposes.

Staff Recommended Position: WATCH

The Board does not have jurisdiction over general business practices and is not authorized to discipline licensees for violations of employment law.

AMENDED IN SENATE JULY 11, 2019
AMENDED IN ASSEMBLY MAY 24, 2019
AMENDED IN ASSEMBLY MAY 1, 2019
AMENDED IN ASSEMBLY MARCH 26, 2019
california legislature—2019–20 regular session

ASSEMBLY BILL

No. 5

Introduced by Assembly Member Gonzalez

December 3, 2018

An act to amend Section 7500.2 of the Business and Professions Code, to amend Section 3351 of, and to add Section 2750.3 to, the Labor Code, and to amend Section 621.5 of the Unemployment Insurance Code, relating to employment, and making an appropriation therefor.

legislative counsel's digest

AB 5, as amended, Gonzalez. Worker status: employees and independent contractors.

Existing law, as established in the case of *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to establish that a worker is an independent contractor for those purposes.

Existing law, for purposes of unemployment insurance provisions, requires employers to make contributions with respect to unemployment

insurance and disability insurance from the wages paid to their employees. Existing law defines “employee” for those purposes to include, among other individuals, ~~any officer of a corporation, and~~ any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an ~~employee.~~ *employee, or is an employee of a person who holds or is required to obtain a valid state contractor’s license.*

This bill would state the intent of the Legislature to codify the decision in the Dynamex case and clarify its application. The bill would provide that the factors of the “ABC” test be applied in order to determine the status of a worker as an employee or independent contractor for all provisions of the Labor Code and the Unemployment Insurance Code, ~~unless another definition or specification of “employee” is provided.~~ *except if a statutory exemption from employment status or from a particular obligation related to employment or where a statutory grant of employment status or a particular right related to employment applies.* The bill would exempt specified professions from these provisions and instead provide that the employment relationship test for those professions shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 if certain requirements are met. These exempt professions would include, *among others*, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, ~~a direct sales salesperson, salespersons,~~ real estate licensees, workers providing hairstyling or barbering services, *electrologists, estheticians, workers providing natural hair braiding, licensed repossession agencies who meet requirements described below,* and those performing work under a contract for professional ~~services.~~ *The bill would require the State Board of Barbering and Cosmetology to promulgate regulations for the development of a booth rental permit and a reasonable biennial fee upon workers providing specified hairstyling or barbering services, by no later than July 1, 2021. services, with another business entity, or pursuant to a subcontract in the construction industry.*

This bill would also expand the definition of employee, for purposes of unemployment insurance provisions, to include individuals who are defined as employees pursuant to the above-described provision of the Labor Code codifying the “ABC” test. Because this bill would ~~expand~~ *increase* the categories of individuals eligible to receive benefits from, and thus would result in additional moneys being deposited into, the

Unemployment Fund, a continuously appropriated fund, the bill would make an appropriation. The bill would state that addition of the provision to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission.

Existing provisions of the Labor Code make it a crime for an employer to violate specified provisions of law with regard to an employee. The Unemployment Insurance Code also makes it a crime to violate specified provisions of law with regard to benefits and payments.

By expanding the definition of an employee for purposes of these provisions, the bill would expand the definition of a ~~crime~~ *crime, thereby imposing a state-mandated local program.*

Existing law, the Collateral Recovery Act, provides for the licensure and regulation of repossession agencies by the Bureau of Security and Investigative Services. Existing law defines a repossession agency to include any person who engages in the business or accepts employment to locate or recover collateral. Existing law permits a licensed repossession agency to only transact business with another person or entity as an independent contractor.

This bill, to ensure that independent contractor status is met, would require the repossession agency to be both free from the control and direction of the hiring person or entity, as specified, and perform work that is outside the usual course of the hiring person or entity’s business.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) On April 30, 2018, the California Supreme Court issued a
- 4 unanimous decision in *Dynamex Operations West, Inc. v. Superior*
- 5 *Court of Los Angeles* (2018) 4 Cal.5th 903.
- 6 (b) In its decision, the Court cited the harm to misclassified
- 7 workers who lose significant workplace protections, the unfairness

1 to employers who must compete with companies that misclassify,
2 and the loss to the state of needed revenue from companies that
3 use misclassification to avoid obligations such as payment of
4 payroll taxes, payment of premiums for workers' compensation,
5 Social Security, unemployment, and disability insurance.

6 (c) The misclassification of workers as independent contractors
7 has been a significant factor in the erosion of the middle class and
8 the rise in income inequality.

9 (d) It is the intent of the Legislature in enacting this act to
10 include provisions that would codify the decision of the California
11 Supreme Court in *Dynamex Operations West, Inc. v. Superior*
12 *Court of Los Angeles* (2018) 4 Cal.5th 903, and would clarify the
13 decision's application in state law.

14 *SEC. 2. Section 7500.2 of the Business and Professions Code*
15 *is amended to read:*

16 7500.2. (a) A repossession agency means and includes any
17 person who, for any consideration whatsoever, engages in business
18 or accepts employment to locate or recover collateral, whether
19 voluntarily or involuntarily, including, but not limited to, collateral
20 registered under the provisions of the Vehicle Code which is
21 subject to a security agreement, except for any person registered
22 pursuant to Article 7 (commencing with Section 7506).

23 (b) A repossession agency licensed pursuant to this chapter shall
24 only transact business with another person or entity as an
25 independent contractor. *To ensure that this requirement is met,*
26 *both of the following shall be satisfied:*

27 (1) *The repossession agency shall be free from the control and*
28 *direction of the hiring person or entity in connection with the*
29 *performance of the work, both under the contract for the*
30 *performance of the work and in fact.*

31 (2) *The work that the repossession agency performs shall be*
32 *outside the usual course of the hiring person or entity's business.*

33 (c) A repossession agency shall not allow a person or entity
34 other than the qualified certificate holder, as provided in Section
35 7505.1, or the owner or officer of the repossession agency, to
36 manage the day-to-day operations, operate, control, or transact
37 business covered by this act, except as provided in Section 7503.3.

38 ~~SEC. 2.~~

39 *SEC. 3. Section 2750.3 is added to the Labor Code, to read:*

1 2750.3. (a) ~~For purposes of the provisions of this code and the~~
2 ~~Unemployment Insurance Code, where another definition or~~
3 ~~specification for the term “employee” is not provided, Except~~
4 ~~where a statutory exemption from employment status or an~~
5 ~~exemption from a particular obligation related to employment~~
6 ~~applies or where a statutory grant of employment status or a~~
7 ~~particular right related to employment applies, for purposes of~~
8 ~~the provisions of this code and the Unemployment Insurance Code,~~
9 and for the wage orders of the Industrial Welfare Commission, a
10 person providing labor or services for remuneration shall be
11 considered an employee unless the hiring entity demonstrates that
12 all of the following conditions are satisfied:

13 (1) The person is free from the control and direction of the hiring
14 entity in connection with the performance of the work, both under
15 the contract for the performance of the work and in fact.

16 (2) The person performs work that is outside the usual course
17 of the hiring entity’s business.

18 (3) The person is customarily engaged in an independently
19 established trade, occupation, or business of the same nature as
20 that involved in the work performed.

21 (b) This section and the holding in *Dynamex Operations West,*
22 *Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th-903, 903
23 (*Dynamex*), do not apply to the following occupations as defined
24 below, and instead, for these occupations only, the employment
25 relationship shall be governed by the test adopted by the California
26 Supreme Court in the case of *S. G. Borello & Sons, Inc. v.*
27 *Department of Industrial Relations* (1989) 48 Cal.3d 341 (*S. G.*
28 *Borello & Sons, Inc.*), or ~~Business and Professions Code Section~~
29 ~~10032(b) Section 7500.2 of, or subdivision (b) of Section 10032~~
30 ~~of, the Business and Professions Code, as set forth in paragraph~~
31 ~~paragraphs (5) and (7) below.~~

32 (1) A person or organization who is licensed by the Department
33 of Insurance pursuant to Chapter 5 (commencing with Section
34 1621), Chapter 6 (commencing with Section 1760), or Chapter 8
35 (commencing with Section 1831) of Part 2 of Division 1 of the
36 Insurance Code.

37 (2) A physician and surgeon licensed by the State of California
38 pursuant to Division 2 (commencing with Section 500) of the
39 Business and Professions Code, performing professional or medical
40 services provided to or by a health care entity, including an entity

1 organized as a sole proprietorship, partnership, or professional
2 corporation as defined in Section 13401 of the Corporations Code.

3 (3) A securities broker-dealer or investment adviser or their
4 agents and representatives that are registered with the Securities
5 and Exchange Commission or the Financial Industry Regulatory
6 Authority or licensed by the State of California under Chapter 2
7 (commencing with Section 25210) or Chapter 3 (commencing with
8 Section 25230) of Division 1 of Part 3 of Title 4 of the
9 Corporations Code.

10 (4) A direct sales salesperson as described in Section 650 of the
11 Unemployment Insurance Code, so long as the conditions for
12 exclusion from employment under that section are met.

13 (5) A real estate licensee licensed by the State of California
14 pursuant to Division 4 (commencing with Section 10000) of the
15 Business and Professions Code shall have their relationship
16 governed by ~~Business and Professions Code Section 10032(b)~~.
17 *subdivision (b) of Section 10032 of the Business and Professions*
18 *Code. If that section is not applicable applicable, then classification*
19 *shall be governed as follows: (1) for purposes of unemployment*
20 *insurance by Unemployment Insurance Code Section 650; Section*
21 *650 of the Unemployment Insurance Code; (2) for purposes of*
22 *workers compensation by Section 3200 and following following;*
23 *and (3) for all other purposes in the Labor Code by the test adopted*
24 *by the California Supreme Court in the case of S.G. S. G. Borello*
25 *and Sons, Inc. v. Department of Industrial Relations (1989) 48*
26 *Cal.3d 341. The statutorily imposed duties of a responsible broker*
27 *under Business and Professions Code Section 10015.1 of the*
28 *Business and Professions Code are not factors under the Borello*
29 *test.*

30 (6) ~~(A)~~ A worker providing hairstyling or barbering services
31 ~~who has a booth rental permit and services, an electrologist, an~~
32 ~~esthetician, or worker providing natural hair braiding, who is free~~
33 ~~from direction or control both under the contract for the~~
34 ~~performance of the work and in fact. For purposes of this~~
35 ~~subparagraph, “free from direction or control” includes, but is not~~
36 ~~limited to, the worker meets all of the following criteria:~~

37 ~~(i)~~

38 ~~(A) Sets their own rates for services performed. performed,~~
39 ~~provided the rate is equal to or greater than two times the minimum~~
40 ~~wages for hours worked and is paid directly by their clients.~~

1 (ii)
 2 (B) Sets their own hours of ~~work~~ *work and has sole discretion*
 3 to decide which clients from who they will provide services.

4 (iii)
 5 (C) Has their own book of business ~~or clients~~ *and schedules*
 6 their own appointments.

7 (D) Uses their own funds to purchase requisite supplies used
 8 in connection with providing services.

9 (E) Maintains their own business license in connection with the
 10 services offered to clients.

11 ~~(B) The State Board of Barbering and Cosmetology shall~~
 12 ~~promulgate regulations no later than July 1, 2021, for the~~
 13 ~~development of a booth renter permit and a reasonable biennial~~
 14 ~~fee not to exceed fifty dollars (\$50), which may be included as an~~
 15 ~~addendum to the initial and biennial license renewal application.~~
 16 ~~Booth renters shall post a notice of their booth renter permit for~~
 17 ~~consumers to view. The board shall share the list and contact~~
 18 ~~information of all booth renters with any state agency that requests~~
 19 ~~the list, for purposes of assuring compliance with this section.~~

20 (C) The permit requirement set forth in subparagraph (B) shall
 21 not become operative until six months after the State Board of
 22 Barbering and Cosmetology finalizes regulations as required under
 23 this section in accordance with the Administrative Procedure Act
 24 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
 25 Division 3 of Title 2 of the Government Code). Until that date, the
 26 employment relationship between a hiring entity and a worker who
 27 meets all the criteria in paragraph (1) of subdivision (a), except
 28 for the permit requirement of subparagraph (B) of this paragraph,
 29 shall be governed by the test adopted by the California Supreme
 30 Court in the case of *S. G. Borello & Sons, Inc. v. Department of*
 31 *Industrial Relations* (1989) 48 Cal.3d 341.

32 (D) For the purposes of this paragraph:
 33 (i) "Hairstyling" is any combination of the following practices:
 34 (I) Arranging, dressing, curling, waving, machineless permanent
 35 waving, permanent waving, cleansing, cutting, shampooing,
 36 relaxing, singeing, bleaching, tinting, coloring, straightening,
 37 dyeing, applying hair tonics to, beautifying, or otherwise treating
 38 by any means, the hair of any person.

39 (II) The provision of natural hair braiding services together with
 40 any of the services and procedures described in subclause (I).

1 (ii) ~~“Barbering shall have the same meaning as defined in~~
2 ~~subdivision (a) of Section 7316 of the Business and Profession~~
3 ~~Code.~~

4 (7) *A repossession agency licensed pursuant to Section 7500.2*
5 *of the Business and Professions Code.*

6 (8) *The relationship between a business entity and an individual*
7 *performing work pursuant to contract with another business entity*
8 *to provide services to the contracting business, if the contracting*
9 *business entity demonstrates that all the following criteria are*
10 *satisfied:*

11 (A) *The service provider is free from the control and direction*
12 *of the contracting business entity in connection with the*
13 *performance of the work, both under the contract for the*
14 *performance of the work and in fact.*

15 (B) *The service provider is providing services to the contracting*
16 *business rather than to customers of the contracting business.*

17 (C) *The contract with the service provider is in writing.*

18 (D) *If the work is performed in a jurisdiction that requires the*
19 *service provider to have a business license or business tax*
20 *registration, the service provider has the required business license*
21 *or business tax registration.*

22 (E) *The service provider maintains a business location that is*
23 *separate from the business or work location of the contracting*
24 *business.*

25 (F) *The service provider is customarily engaged in an*
26 *independently established business of the same nature as that*
27 *involved in the work performed.*

28 (G) *The service provider actually contracts with other businesses*
29 *to provide the same or similar services and maintains a clientele*
30 *without restrictions from the hiring entity.*

31 (H) *The service provider advertises and holds itself out to the*
32 *public as available to provide the same or similar services.*

33 (I) *The service provider has no other financial relationships*
34 *with the contracting business.*

35 (J) *The service provider can negotiate its own rates, provided*
36 *that the rate is equal to or greater than two times the minimum*
37 *wage for hours worked.*

38 (K) *The service provider can set its own hours and location of*
39 *work.*

1 (L) *The service provider is not performing the type of work for*
2 *which a license from the Contractor's State License Board is*
3 *required, pursuant to Section 7000 and following of the Business*
4 *and Professions Code.*

5 (c) (1) This section and the holding in ~~Dynamex-Operations~~
6 ~~West, Inc. v. Superior Court (2018) 4 Cal.5th 903~~, do not apply
7 to a contract for professional service and instead the employment
8 relationship shall be governed by the test adopted by the California
9 Supreme Court in the case of ~~S. G. Borello & Sons, Inc. v.~~
10 ~~Department of Industrial Relations (1989) 48 Cal.3d 341, Inc.~~, if
11 the hiring entity demonstrates that all of the following factors are
12 satisfied:

13 (A) The individual maintains a business location, which may
14 include the individual's residence, that is separate from the hiring
15 entity.

16 (B) If work is performed more than six months after the effective
17 date of this section, the individual has a business license, in
18 addition to any required professional licenses or permits for the
19 individual to practice in their profession.

20 (C) The individual has the ability to use their own employees
21 in the completion of the work, where reasonable, and has the
22 authority to hire and fire other persons who assist in providing the
23 services. Nothing in this section requires an individual to hire an
24 employee.

25 (D) The individual has the ability to engage in other contracts
26 for services than with the hiring entity.

27 (E) Both the individual and the hiring entity have the ability to
28 negotiate compensation for the services performed.

29 (F) Outside of project completion dates and reasonable business
30 hours, the individual has the ability to set their own hours.

31 (G) For services that do not reasonably have to be performed
32 at a specific location, the individual can determine where to
33 perform the services under the contract.

34 (H) The individual is customarily engaged in the same type of
35 work performed under the contract with another hiring entity or
36 holds themselves out to other potential customers as available to
37 perform the same type of work.

38 (I) The individual customarily and regularly exercises discretion
39 and independent judgment in the performance of the services.

40 (2) For purposes of this subdivision:

1 (A) An “individual” includes an individual providing services
2 through a sole proprietorship or other business entity.

3 (B) (i) “Professional services” means services that ~~either~~ meet
4 any of the following:

5 (I) Require an active license from the State of California and
6 involve the practice of one of the following recognized professions:
7 law, dentistry, architecture, engineering, *podiatrists*, *veterinarian*,
8 *private investigation*, or accounting.

9 (II) Require possession of an advanced degree that customarily
10 involves a prolonged course of specialized intellectual instruction
11 and study in the field of marketing or the administration of human
12 resources from an accredited university, college, or professional
13 school, as distinguished from a general academic education.

14 (III) *Work that is performed by a freelance writer who does not*
15 *provide content to any one publication more than 25 times per*
16 *year, if that person actually sets all of the following:*

17 (ia) *Hours.*

18 (ib) *Locations.*

19 (ic) *Rate of pay for work provided, except that rate shall be*
20 *equal to or greater than two times the minimum wage for hours*
21 *worked.*

22 (IV) *Fine artists, professional grant writers, and graphic*
23 *designers if that person actually sets the hours, locations, and*
24 *rates of pay for work provided.*

25 (ii) “Professional services” does not include professionals
26 engaged in the fields of health care and medicine.

27 (d) *This section and the holding in Dynamex do not apply to*
28 *the relationship between a contractor and an individual performing*
29 *work pursuant to a subcontract in the construction industry, and*
30 *instead the employment relationship shall be governed by the test*
31 *adopted by the California Supreme Court in the case of S. G.*
32 *Borello & Sons, Inc., if the contractor demonstrates that all the*
33 *following criteria are satisfied:*

34 (1) *The individual is free from the control and direction of the*
35 *contractor in connection with the performance of the work, both*
36 *under the contract for the performance of the work and in fact.*

37 (2) *The subcontract is in writing.*

38 (3) *The subcontractor is licensed by the Contractors State*
39 *License Board and the work is within the scope of that license.*

1 (4) If the work is performed in a jurisdiction that requires the
2 subcontractor to have a business license or business tax
3 registration, the subcontractor has the required business license
4 or business tax registration.

5 (5) The subcontractor maintains a business location that is
6 separate from the business or work location of the contractor.

7 (6) The subcontractor has the authority to hire and to fire other
8 persons to provide or to assist in providing the services.

9 (7) The subcontractor assumes financial responsibility for errors
10 or omissions in labor or services as evidenced by insurance,
11 performance bonds, or warranties relating to the labor or services
12 being provided.

13 (8) The subcontractor is customarily engaged in an
14 independently established business of the same nature as that
15 involved in the work performed.

16 ~~(e)~~

17 (e) The addition of this section to the Labor Code by this act
18 does not constitute a change in, but is declaratory of, existing law
19 with regard to violations of the Labor Code relating to wage orders
20 of the Industrial Welfare Commission.

21 *SEC. 4. Section 3351 of the Labor Code is amended to read:*

22 3351. "Employee" means every person in the service of an
23 employer under any appointment or contract of hire or
24 apprenticeship, express or implied, oral or written, whether lawfully
25 or unlawfully employed, and includes:

26 (a) Aliens and minors.

27 (b) All elected and appointed paid public officers.

28 (c) All officers and members of boards of directors of
29 quasi-public or private corporations while rendering actual service
30 for the corporations for pay. An officer or member of a board of
31 directors may elect to be excluded from coverage in accordance
32 with paragraph (16), (18), or (19) of subdivision (a) of Section
33 3352.

34 (d) Except as provided in paragraph (8) of subdivision (a) of
35 Section 3352, any person employed by the owner or occupant of
36 a residential dwelling whose duties are incidental to the ownership,
37 maintenance, or use of the dwelling, including the care and
38 supervision of children, or whose duties are personal and not in
39 the course of the trade, business, profession, or occupation of the
40 owner or occupant.

1 (e) All persons incarcerated in a state penal or correctional
2 institution while engaged in assigned work or employment as
3 defined in paragraph (1) of subdivision (a) of Section 10021 of
4 Title 8 of the California Code of Regulations, or engaged in work
5 performed under contract.

6 (f) All working members of a partnership or limited liability
7 company receiving wages irrespective of profits from the
8 partnership or limited liability company. A general partner of a
9 partnership or a managing member of a limited liability company
10 may elect to be excluded from coverage in accordance with
11 paragraph (17) of subdivision (a) of Section 3352.

12 (g) A person who holds the power to revoke a trust, with respect
13 to shares of a private corporation held in trust or general partnership
14 or limited liability company interests held in trust. To the extent
15 that this person is deemed to be an employee described in
16 subdivision (c) or (f), as applicable, the person may also elect to
17 be excluded from coverage as described in subdivision (c) or (f),
18 as applicable, if that person otherwise meets the criteria for
19 exclusion, as described in Section 3352.

20 ~~(h) This section shall become operative on July 1, 2018.~~

21 (h) *It is the intent of the Legislature to amend the law to address*
22 *workers' compensation and the holding in Dynamex Operations*
23 *West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal.5th 903.*
24 *SEC. 5. Section 621.5 of the Unemployment Insurance Code*
25 *is amended to read:*

26 621.5. (a) "Employee" also means any individual who is an
27 employee, pursuant to Section 2750.5 of the Labor Code, of a
28 person who holds a valid state contractor's license pursuant to
29 Chapter 9 (commencing with Section 7000) of Division 3 of the
30 Business and Professions Code.

31 (b) When subdivision (a) does not apply, "employee" ~~shall~~ also
32 ~~mean~~ *means* any individual who is an employee, pursuant to
33 Section 2750.5 of the Labor Code, of a person who is required to
34 obtain a valid state contractor's license pursuant to Chapter 9
35 (commencing with Section 7000) of Division 3 of the Business
36 and Professions Code.

37 (c) *"Employee" also means any individual who is an employee*
38 *pursuant to Section 2750.3 of the Labor Code.*

1 ~~SEC. 3.~~

2 *SEC. 6.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.

O

**Agenda Item 3
August 27, 2019**

**Review, Discussion and Possible Action Regarding AB 1076 (Ting) Criminal
Records: Automatic Relief**

Purpose of the item

This agenda item has been included to provide the Committee with an update on AB 1076 (Ting).

Action(s) requested

N/A

Background

Board staff is monitoring and tracking several bills introduced during the current two-year legislative session.

AB 1076 (Ting) would require the Department of Justice (DOJ) to streamline the process to seal arrest records and dismiss convictions by reviewing the records in the statewide criminal justice databases on a weekly basis and identifying individuals who are eligible for arrest and conviction record relief, with specified exemptions. It would also require the DOJ to grant relief to an individual without a petition or motion being filed on the individual's behalf.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- AB 1076 analysis and bill text

Board of Chiropractic Examiners Bill Analysis

Bill Number: AB 1076
Author: Assembly Member Phil Ting
Bill Version: Amended August 12, 2019
Subject: Criminal Records: Automatic Relief
Sponsor: California for Safety and Justice
Status of Bill: Held in Suspense in Appropriations. Set for hearing 08/30/2019

Summary:

This bill would require the Department of Justice (DOJ) to review the records in the statewide criminal justice databases on a weekly basis and identify individuals who are eligible for relief by having their arrest records or conviction records withheld from disclosure, with specified exemptions. It would also require the DOJ to grant relief to an individual without a petition or motion being filed on the individual's behalf.

Existing Law:

- Authorizes, in some cases, a person who was arrested to petition the court to seal their arrest record if they successfully completed certain diversion or deferment programs following an arrest for a crime, or if the arrest did not result in a conviction. The arrest is deemed to have never occurred. (Pen. Code § 851.87, § 851.87 and § 851.91 (a))
- Requires a court to dismiss the accusation or information against the defendant and release the defendant from all penalties and disabilities resulting from the offense if relief is granted, with exceptions. (Pen. Code § 1203.4 (a) (1))
- Authorizes a defendant to petition to withdraw a plea of guilty or nolo contendere and enter a plea of not guilty if the defendant has fulfilled the conditions of probation, or if other specified circumstances are met. The defendant must not be serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense. (Pen. Code § 1203.4 (a) (1))
- Authorizes a defendant, who meets specified conditions, to file a similar petition if they were convicted of a misdemeanor and not granted probation, convicted of an infraction, or completed a sentence for certain felonies. (Pen. Code § 1203.4a (a), § 1203.4a (b) & § 1203.41).
- Authorizes a defendant to withdraw a plea of guilty and dismiss the charges if the defendant was convicted of an offense prior to the 2011 Realignment Act, for a crime for which the defendant would otherwise have been eligible for sentencing. (Pen. Code § 1203.42)

This Bill Would:

- Require the DOJ to review records in the statewide criminal justice databases on a weekly basis and based on the information in the state summary criminal history repository, identify persons who are eligible for arrest record relief and automatic conviction record relief.
- Specify that a person is eligible for arrest record relief if the arrest occurred on or after January 1, 1973, and the person meets any of the following conditions:
 1. The arrest was for a misdemeanor offense and the charge was dismissed;
 2. The arrest was for a misdemeanor offense, there is no indication that criminal proceedings have been initiated, at least one calendar year has elapsed since the date of the arrest, and no conviction occurred, or the arrestee was acquitted of any charges that arose, from that arrest;
 3. The arrest was for an offense that is punishable by imprisonment in county jail, there is no indication that criminal proceedings have been initiated, and at least three calendar years have elapsed since the date of the arrest, and no conviction has occurred, or the arrestee has been acquitted of the charges;
 4. The person successfully completed a diversion or deferred entry of judgement program related to the arrest as provided.
- Require the DOJ to grant arrest record relief to an eligible person without requiring a petition or a motion by a party for that relief if relevant information is present in DOJ's records.
- Require the DOJ to update to the state summary criminal history information to document the relief has been granted, include the date the DOJ granted arrest record relief. The note "Arrest relief granted" would be included in all statewide criminal databases with a record of arrest.
- Specify that except as otherwise provided in the paragraph below, a person who has been granted arrest relief is released of any penalties and disabilities resulting from the arrest and the arrest is deemed not to have occurred. Any questions relating to an arrest, for which relief has been granted, may be answered accordingly.
- State that arrest record relief granted pursuant to the provisions of this bill is subject to the following conditions:
 1. It does not relieve a person of the obligation to disclose an arrest in response to a direct question contained in a questionnaire or application for employment as a peace officer.
 2. It has no effect on the ability of a criminal justice agency to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted.
 3. It does not affect a person's authorization to own, possess, or have in the person's custody or control any firearm, or the person's susceptibility to conviction for being a prohibited person in possession of a firearm, as specified, if the arrest would otherwise affect this authorization or susceptibility.

4. It does not affect any prohibition from holding public office that would otherwise apply under law as a result of the arrest.
 5. It does not affect existing authority to receive or take adverse action based on criminal history information, including authority to receive certified court records received or evaluated pursuant to existing provisions of law regulating community care facilities, residential care facilities, and day care facilities.
- Require the DOJ, on a weekly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction for which arrest record relief was granted. The court would be prohibited from disclosing information concerning an arrest that is granted relief, except for the person whose arrest was granted relief, a criminal justice entity or agencies under the Department of Social Services.
 - Provide that the provisions of this bill do not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law.
 - Specify that a person is eligible for automatic conviction relief if he or she meets all of the following conditions:
 1. The person is not required to register as a sex offender;
 2. The person does not have an active record for local, state, or federal supervision in the Supervised Release File;
 3. The person is not currently serving a sentence for any offense and does not have any pending criminal charges;
 4. There is no indication that the conviction resulted in a sentence of incarceration in the state prison, except if the defendant was sentenced prior to the implementation of the 2011 Realignment Act (which enacted a major shift or realignment of state program responsibilities and revenues to local governments) for a crime for which the defendant is not eligible to serve their sentence in a county jail, and;
 5. The conviction occurred on or after January 1, 1973 and meets of the following criteria:
 - a) The defendant was sentenced to probation and has completed the term of probation without revocation;
 - b) The defendant was convicted of an infraction or misdemeanor and was not granted probation, has completed their sentence and based upon the disposition date in DOJ's record, at least one calendar year has elapsed since the date of judgment.
 - c) The defendant was sentenced prior to the implementation of the 2011 Realignment Act for a felony for which he or she would otherwise have been eligible for sentencing pursuant to Realignment and based on the disposition date and sentence specified in DOJ's records, it appears that two years have elapsed following the defendant's completion of the sentence.
 - Provide that except as specified, DOJ shall grant relief, including dismissal of a conviction, to an eligible person without requiring a petition or motion by a party for that relief if the relevant information is present in DOJ's records.
 - Require the DOJ to update the state summary criminal history information to document the relief has been granted, include the date the DOJ granted relief. The note "Relief granted" would be included in all statewide criminal databases with a record of the conviction.

- Provide that except as applied to any revocation or suspension of a person’s driving privileges, a person granted conviction relief pursuant to the provisions of this bill shall be released from all penalties and disabilities resulting from the offense of which the person has been convicted.
- Require the DOJ, on a weekly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction for which conviction record relief was granted. The court would be prohibited from disclosing information concerning a conviction, except to the person whose conviction was granted relief, a criminal justice entity or agencies under the Department of Social Services.
- Specify that arrest record relief granted pursuant to the provisions of this bill is subject to the following conditions:
 1. It does not relieve a person of the obligation to disclose a criminal conviction in response to a direct question contained in a questionnaire or application for employment as a peace officer;
 2. It does not relieve a person of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, or for contracting with the California State Lottery Commission;
 3. It has no effect on the ability of a criminal justice agency to access and use records that are granted relief to the same extent that would have been permitted for a criminal justice agency had relief not been granted;
 4. It does not limit the jurisdiction of the court over any subsequently filed motion to amend the record, petition or motion for postconviction relief, or collateral attack on a conviction for which relief has been granted;
 5. It does not permit a person to own, possess, or have in custody or control any firearm or prevent his or her conviction for being a prohibited person in possession of a firearm;
 6. It does not affect any prohibition from holding public office that would otherwise apply under law as a result of the criminal conviction;
 7. It does not affect existing authority to receive or take adverse action based on criminal history information, including authority to receive certified court records received or evaluated pursuant to existing provisions of law regulation community care facilities, residential care facilities, and child day care facilities; and,
 8. It does not make eligible a person who is otherwise ineligible to provide or receive payment for providing in-home supportive services;
 9. In any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if the relief had not been granted.
- Provide that the provisions of this bill do not limit petitions, motions, or orders for arrest record relief, as required or authorized by any other law.
- Authorize the prosecuting attorney or probation department to file a petition to prohibit the DOJ from granting automatic relief based on a showing that granting such relief would pose a threat to the public safety.
- Establish a process for an attorney petitioning to prohibit the DOJ from granting relief.

- Provide that the court shall give notice to the defendant and conduct a hearing on the motion within 45 days after the motion is filed.
- Modify sections 480 and 480.2 of the Business and Professions Code, which establish prohibitions relating to the denial of licensure, to include the DOJ's authority to automate the process of having eligible conviction records dismissed.

Background:

According to the author's office:

"Individuals with criminal records face barriers in gaining employment, making them more likely to reoffend. Current law allows individuals to clear arrests that did not result in a conviction, and to clear convictions that are eligible for dismissal by petitioning the court. This imposes a burden on affected individuals to be more aware of their eligibility and retain an attorney to proactively file the necessary petition. There is a great cost to our economy and society when we shut out job-seeking workers looking for a better future. This bill would open doors to those facing employment and housing barriers by automating the process of clearing an arrest or criminal record for eligible individuals."

According to the bill's sponsor, Californians for Safety and Justice, "nearly 90 % of employers, 80 % of landlords, and 60 % of college screen applicants' criminal records. The *Survey of California Victims and Populations Affected by Mental Health, Substance Issues, and Convictions* found that 76 percent of individuals with a criminal conviction report instability in finding a job or housing, obtaining a license, paying for fines or fees, and having health issues. A National Institute of Justice study found that having a criminal record reduced the chance of getting a job or call back by 50%."

AB 1076 would require the DOJ to automate the process of having eligible arrest records sealed, and eligible conviction records dismissed. This would allow formerly arrested and convicted individuals to dedicate their time and resources toward securing employment immediately upon their release into the community. This bill would reduce barriers to employment and housing and the likelihood of subsequent criminal behavior in the future.

Fiscal Impact:

AB 1076 would have an insignificant fiscal impact upon the BCE. This bill would limit the number of violations being reported to the Board, thereby resulting in a reduction of workload and expenses.

Support & Opposition:

Support:

- California for Safety and Justice (Sponsor)
- American Civil Liberties Union of California

- California Public Defenders Association
- Community Works
- Feminists in Action
- Indivisible: Sausalito, Stanislaus and San Diego Central
- Initiate Justice
- National Association of Social Workers, California Chapter
- Showing up for Racial Justice, Marin
- Sister Warrior Freedom Coalition
- Southern California Coalition
- We the People – San Diego

Opposition:

- California Law Enforcement Association of Records Supervisors, Inc.
- Contractors State License Board
- California District Attorneys Association
- California Board of Accountancy

Arguments:

Pro:

- The bill’s sponsor, Californians for Safety and Justice (CFJ) claims that “Eight million California residents have criminal convictions on their records that hamper their ability to find work and housing, secure public benefits, or even get admitted to college. Millions more have old arrests on their record that never resulted in a conviction but remain as obstacles of employment.”
- The bill’s sponsor also asserts that this bill would automate arrest and conviction relief by dismissing eligible convictions for individuals who have completed their probation and/or county jail sentence, arrests that did not result in a conviction for qualified misdemeanors, non-violent, non-sex felonies three years after arrest.

Con:

- This bill would preclude a board’s receipt of convictions from DOJ in the course of reviewing an application if they resulted in:
 - 1) County jail for a specified term and a court suspends the execution of concluding a portion of the term for a period selected at the court’s discretion;
 - 2) Conviction of misdemeanor and not granted probation, completed their sentence and at least one calendar year has elapsed since the day of judgement;
 - 3) A sentence prior to the implementation of the 2011 Realignment Act for a felony that would have otherwise been eligible for sentencing pursuant to Realignment and two years have elapsed since the completion of the sentence.
 - 4) DOJ identifying individuals with convictions that meet specified criteria in the proposed section 1203.425 of the Penal code.

The Board would be precluded from using, for licensing and enforcement purposes, these types of convictions that may be related to the qualifications and duties of the business for less than 7 years. Many of these non-serious convictions may still have the potential to harm consumers, thereby limiting a board's ability to fulfill its licensing and serve its public protection purpose.

- The California District Attorneys Association (CDAA) argues that it is not clear whether the intent of this bill is to provide automatic arrest record relief to a defendant who has pled guilty to other charges and might be on probation, parole or in custody on the offense that was not dismissed.
- Additionally, CDAA has expressed concern over section 1203.425 (a) (2) (D) (i): a defendant is eligible for relief if he or she was sentenced to probation and has completed their term of probation without revocation. However, "it would not be feasible to notify DOJ 90 days before the person is eligible because a person's probation can be revoked until the last day of probation." CDAA has questioned the validity of this requirement and raised a question as to how a notice of objection to eligibility can be given to DOJ 90 days in advance.
- Although this bill requires DOJ to provide notice to the court when it grants relief, there is no similar provision that requires a notice to be sent to the individual for whom relief has been granted. This may curtail the benefits that are otherwise gained by going through the court process where a person is assured that their record has been sealed or dismissed.
- In light of the recent Attorney General's Office (AG) increase in billings, there is no provision in AB 1076 allowing a board to recover AG's fees in the event that a court determines an eligible individual is relieved from all penalties and assessments, which could result in an annual revenue loss for the BCE. Additionally, this bill does not provide clarification as to whether a person who is eligible for relief is required to pay any penalties and how much is assessed in monetary penalties.

Staff Recommended Position: NEUTRAL

AB 1076 may further restrict the Board's ability in using criminal history to deny, suspend or revoke a license based on a person's eligibility for automatic arrest or conviction records relief.

AMENDED IN SENATE AUGUST 12, 2019
AMENDED IN SENATE JULY 11, 2019
AMENDED IN SENATE JUNE 26, 2019
AMENDED IN ASSEMBLY MAY 16, 2019
AMENDED IN ASSEMBLY MARCH 27, 2019
california legislature—2019–20 regular session

ASSEMBLY BILL

No. 1076

Introduced by Assembly Member Ting
(Coauthors: Assembly Members Chiu and Mark Stone)
(Coauthor: Senator Wiener)

February 21, 2019

An act to amend Sections ~~480 and 480.2~~ 480, 480.2, and 11345.2 of the Business and Professions Code, to amend Section 432.7 of the Labor Code, and to amend Section 11105 of, and to add Sections 851.93 and 1203.425 to, the Penal Code, relating to criminal records.

legislative counsel's digest

AB 1076, as amended, Ting. Criminal records: automatic relief.

Existing law authorizes a person who was arrested and has successfully completed a prefiling diversion program, a person who has successfully completed a specified drug diversion program, a person who has successfully completed a specified deferred entry of judgment program, and a person who has suffered an arrest that did not result in a conviction, under certain conditions, to petition the court to seal the person's arrest record. Under existing law, if a defendant successfully

completes certain diversion programs, the arrest for the crime for which the defendant was diverted is deemed to have never occurred.

Existing law authorizes a defendant to petition to withdraw the defendant's plea of guilty or nolo contendere and enter a plea of not guilty, if the defendant has fulfilled the conditions of probation, or if other specified circumstances are met, and the defendant is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense. If relief is granted, existing law requires the court to dismiss the accusation or information against the defendant and release the defendant from all penalties and disabilities resulting from the offense, with exceptions. Existing law also authorizes a defendant to file a similar petition if the defendant was convicted of a misdemeanor and not granted probation, was convicted of an infraction, or completed a sentence for certain felonies, and the defendant met specified conditions.

This bill would, commencing January 1, 2021, require the Department of Justice, on a weekly basis, to review the records in the statewide criminal justice databases and to identify persons who are eligible for relief by having their arrest records, or their criminal conviction records, withheld from disclosure, as specified. The bill would ~~require~~ *authorize* the department to grant relief to an eligible person, without requiring a petition or motion. The bill would not limit petitions, motions, or orders for relief, as required or authorized by any other law.

The bill would require an update to the state summary criminal history information to document the relief granted. The bill would require the department, on a weekly basis, to electronically submit a notice to the superior court having jurisdiction over the criminal case, informing the court of all cases for which relief was granted. The bill would prohibit the court from disclosing information concerning an arrest or conviction granted relief, with exceptions.

~~For convictions entered on or after January 1, 2018, the~~ *The* bill would authorize the prosecuting attorney or probation department, no later than 90 calendar days before the date of a person's eligibility for relief, to file a motion to prohibit the department from granting automatic relief for criminal conviction records as described above. If the court grants that motion, the bill would prohibit the department from granting relief, but the person would continue to be eligible for relief through other existing procedures, including petitions to the court.

The bill would require the Department of Justice to annually publish statistics regarding relief granted pursuant to the provisions of this bill, as specified.

The bill would require a court, at the time of sentencing, to advise each defendant of their right to conviction relief pursuant to the provisions of this bill, as specified.

The bill would make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 480 of the Business and Professions
2 Code, as amended by Section 3 of Chapter 995 of the Statutes of
3 2018, is amended to read:

4 480. (a) A board may deny a license regulated by this code
5 on the grounds that the applicant has one of the following:

6 (1) Been convicted of a crime. A conviction within the meaning
7 of this section means a plea or verdict of guilty or a conviction
8 following a plea of nolo contendere. Any action that a board is
9 permitted to take following the establishment of a conviction may
10 be taken when the time for appeal has elapsed, or the judgment of
11 conviction has been affirmed on appeal, or when an order granting
12 probation is made suspending the imposition of sentence,
13 irrespective of a subsequent order under the provisions of Section
14 1203.4, 1203.4a, 1203.41, or 1203.425 of the Penal Code.

15 (2) Done any act involving dishonesty, fraud, or deceit with the
16 intent to substantially benefit themselves or another, or
17 substantially injure another.

18 (3) (A) Done any act that if done by a licentiate of the business
19 or profession in question, would be grounds for suspension or
20 revocation of license.

21 (B) The board may deny a license pursuant to this subdivision
22 only if the crime or act is substantially related to the qualifications,
23 functions, or duties of the business or profession for which
24 application is made.

25 (b) Notwithstanding any other provision of this code, a person
26 shall not be denied a license solely on the basis that they have been
27 convicted of a felony if they have obtained a certificate of
28 rehabilitation under Chapter 3.5 (commencing with Section

1 4852.01) of Title 6 of Part 3 of the Penal Code or that they have
2 been convicted of a misdemeanor if they have met all applicable
3 requirements of the criteria of rehabilitation developed by the board
4 to evaluate the rehabilitation of a person when considering the
5 denial of a license under subdivision (a) of Section 482.

6 (c) Notwithstanding any other provisions of this code, a person
7 shall not be denied a license solely on the basis of a conviction
8 that has been dismissed pursuant to Section 1203.4, 1203.4a,
9 1203.41, or 1203.425 of the Penal Code. An applicant who has a
10 conviction that has been dismissed pursuant to Section 1203.4,
11 1203.4a, 1203.41, or 1203.425 of the Penal Code shall provide
12 proof of the dismissal.

13 (d) A board may deny a license regulated by this code on the
14 ground that the applicant knowingly made a false statement of fact
15 that is required to be revealed in the application for the license.

16 (e) This section shall become inoperative on July 1, 2020, and,
17 as of January 1, 2021, is repealed.

18 SEC. 2. Section 480 of the Business and Professions Code, as
19 added by Section 4 of Chapter 995 of the Statutes of 2018, is
20 amended to read:

21 480. (a) Notwithstanding any other provision of this code, a
22 board may deny a license regulated by this code on the grounds
23 that the applicant has been convicted of a crime or has been subject
24 to formal discipline only if either of the following conditions are
25 met:

26 (1) The applicant has been convicted of a crime within the
27 preceding seven years from the date of application that is
28 substantially related to the qualifications, functions, or duties of
29 the business or profession for which the application is made,
30 regardless of whether the applicant was incarcerated for that crime,
31 or the applicant has been convicted of a crime that is substantially
32 related to the qualifications, functions, or duties of the business or
33 profession for which the application is made and for which the
34 applicant is presently incarcerated or for which the applicant was
35 released from incarceration within the preceding seven years from
36 the date of application. However, the preceding seven-year
37 limitation shall not apply in either of the following situations:

38 (A) The applicant was convicted of a serious felony, as defined
39 in Section 1192.7 of the Penal Code or a crime for which

1 registration is required pursuant to paragraph (2) or (3) of
2 subdivision (d) of Section 290 of the Penal Code.

3 (B) The applicant was convicted of a financial crime currently
4 classified as a felony that is directly and adversely related to the
5 fiduciary qualifications, functions, or duties of the business or
6 profession for which the application is made, pursuant to
7 regulations adopted by the board, and for which the applicant is
8 seeking licensure under any of the following:

9 (i) Chapter 1 (commencing with Section 5000) of Division 3.

10 (ii) Chapter 6 (commencing with Section 6500) of Division 3.

11 (iii) Chapter 9 (commencing with Section 7000) of Division 3.

12 (iv) Chapter 11.3 (commencing with Section 7512) of Division
13 3.

14 (v) Licensure as a funeral director or cemetery manager under
15 Chapter 12 (commencing with Section 7600) of Division 3.

16 (vi) Division 4 (commencing with Section 10000).

17 (2) The applicant has been subjected to formal discipline by a
18 licensing board in or outside California within the preceding seven
19 years from the date of application based on professional misconduct
20 that would have been cause for discipline before the board for
21 which the present application is made and that is substantially
22 related to the qualifications, functions, or duties of the business or
23 profession for which the present application is made. However,
24 prior disciplinary action by a licensing board within the preceding
25 seven years shall not be the basis for denial of a license if the basis
26 for that disciplinary action was a conviction that has been dismissed
27 pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425
28 of the Penal Code or a comparable dismissal or expungement.

29 (b) Notwithstanding any other provision of this code, a person
30 shall not be denied a license on the basis that the person has been
31 convicted of a crime, or on the basis of acts underlying a conviction
32 for a crime, if that person has obtained a certificate of rehabilitation
33 under Chapter 3.5 (commencing with Section 4852.01) of Title 6
34 of Part 3 of the Penal Code, has been granted clemency or a pardon
35 by a state or federal executive, or has made a showing of
36 rehabilitation pursuant to Section 482.

37 (c) Notwithstanding any other provision of this code, a person
38 shall not be denied a license on the basis of any conviction, or on
39 the basis of the acts underlying the conviction, that has been
40 dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42,

1 or 1203.425 of the Penal Code, or a comparable dismissal or
2 expungement. An applicant who has a conviction that has been
3 dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42,
4 or 1203.425 of the Penal Code shall provide proof of the dismissal
5 if it is not reflected on the report furnished by the Department of
6 Justice.

7 (d) Notwithstanding any other provision of this code, a board
8 shall not deny a license on the basis of an arrest that resulted in a
9 disposition other than a conviction, including an arrest that resulted
10 in an infraction, citation, or a juvenile adjudication.

11 (e) A board may deny a license regulated by this code on the
12 ground that the applicant knowingly made a false statement of fact
13 that is required to be revealed in the application for the license. A
14 board shall not deny a license based solely on an applicant's failure
15 to disclose a fact that would not have been cause for denial of the
16 license had it been disclosed.

17 (f) A board shall follow the following procedures in requesting
18 or acting on an applicant's criminal history information:

19 (1) A board issuing a license pursuant to Chapter 3 (commencing
20 with Section 5500), Chapter 3.5 (commencing with Section 5615),
21 Chapter 10 (commencing with Section 7301), Chapter 20
22 (commencing with Section 9800), or Chapter 20.3 (commencing
23 with Section 9880), of Division 3, or Chapter 3 (commencing with
24 Section 19000) or Chapter 3.1 (commencing with Section 19225)
25 of Division 8 may require applicants for licensure under those
26 chapters to disclose criminal conviction history on an application
27 for licensure.

28 (2) Except as provided in paragraph (1), a board shall not require
29 an applicant for licensure to disclose any information or
30 documentation regarding the applicant's criminal history. However,
31 a board may request mitigating information from an applicant
32 regarding the applicant's criminal history for purposes of
33 determining substantial relation or demonstrating evidence of
34 rehabilitation, provided that the applicant is informed that
35 disclosure is voluntary and that the applicant's decision not to
36 disclose any information shall not be a factor in a board's decision
37 to grant or deny an application for licensure.

38 (3) If a board decides to deny an application for licensure based
39 solely or in part on the applicant's conviction history, the board
40 shall notify the applicant in writing of all of the following:

- 1 (A) The denial or disqualification of licensure.
- 2 (B) Any existing procedure the board has for the applicant to
3 challenge the decision or to request reconsideration.
- 4 (C) That the applicant has the right to appeal the board's
5 decision.
- 6 (D) The processes for the applicant to request a copy of the
7 applicant's complete conviction history and question the accuracy
8 or completeness of the record pursuant to Sections 11122 to 11127
9 of the Penal Code.
- 10 (g) (1) For a minimum of three years, each board under this
11 code shall retain application forms and other documents submitted
12 by an applicant, any notice provided to an applicant, all other
13 communications received from and provided to an applicant, and
14 criminal history reports of an applicant.
- 15 (2) Each board under this code shall retain the number of
16 applications received for each license and the number of
17 applications requiring inquiries regarding criminal history. In
18 addition, each licensing authority shall retain all of the following
19 information:
- 20 (A) The number of applicants with a criminal record who
21 received notice of denial or disqualification of licensure.
- 22 (B) The number of applicants with a criminal record who
23 provided evidence of mitigation or rehabilitation.
- 24 (C) The number of applicants with a criminal record who
25 appealed any denial or disqualification of licensure.
- 26 (D) The final disposition and demographic information,
27 consisting of voluntarily provided information on race or gender,
28 of any applicant described in subparagraph (A), (B), or (C).
- 29 (3) (A) Each board under this code shall annually make
30 available to the public through the board's internet website and
31 through a report submitted to the appropriate policy committees
32 of the Legislature deidentified information collected pursuant to
33 this subdivision. Each board shall ensure confidentiality of the
34 individual applicants.
- 35 (B) A report pursuant to subparagraph (A) shall be submitted
36 in compliance with Section 9795 of the Government Code.
- 37 (h) "Conviction" as used in this section shall have the same
38 meaning as defined in Section 7.5.

1 (i) This section does not in any way modify or otherwise affect
2 the existing authority of the following entities in regard to
3 licensure:

- 4 (1) The State Athletic Commission.
- 5 (2) The Bureau for Private Postsecondary Education.
- 6 (3) The California Horse Racing Board.

7 (j) This section shall become operative on July 1, 2020.

8 SEC. 3. Section 480.2 of the Business and Professions Code
9 is amended to read:

10 480.2. (a) The Bureau for Private Postsecondary Education,
11 the State Athletic Commission, and the California Horse Racing
12 Board may deny a license regulated by it on the grounds that the
13 applicant has one of the following:

- 14 (1) Been convicted of a crime.
- 15 (2) Done any act involving dishonesty, fraud, or deceit with the
16 intent to substantially benefit themselves or another, or
17 substantially injure another.
- 18 (3) (A) Done any act that if done by a licentiate of the business
19 or profession in question, would be grounds for suspension or
20 revocation of license.

21 (B) The Bureau for Private Postsecondary Education, the State
22 Athletic Commission, and the California Horse Racing Board may
23 deny a license pursuant to this subdivision only if the crime or act
24 is substantially related to the qualifications, functions, or duties of
25 the business or profession for which application is made.

26 (b) Notwithstanding any other provision of this code, a person
27 shall not be denied a license solely on the basis that the person has
28 been convicted of a felony if that person has obtained a certificate
29 of rehabilitation under Chapter 3.5 (commencing with Section
30 4852.01) of Title 6 of Part 3 of the Penal Code or that the person
31 has been convicted of a misdemeanor if the person has met all
32 applicable requirements of the criteria of rehabilitation developed
33 by the Bureau for Private Postsecondary Education, the State
34 Athletic Commission, and the California Horse Racing Board to
35 evaluate the rehabilitation of a person when considering the denial
36 of a license under paragraph (1) of subdivision (f).

37 (c) Notwithstanding any other provisions of this code, a person
38 shall not be denied a license by the Bureau for Private
39 Postsecondary Education, the State Athletic Commission, or the
40 California Horse Racing Board solely on the basis of a conviction

1 that has been dismissed pursuant to Section 1203.4, 1203.4a,
2 1203.41, or 1203.425 of the Penal Code. An applicant who has a
3 conviction that has been dismissed pursuant to Section 1203.4,
4 1203.4a, 1203.41, or 1203.425 of the Penal Code shall provide
5 proof of the dismissal.

6 (d) The Bureau for Private Postsecondary Education, the State
7 Athletic Commission, and the California Horse Racing Board may
8 deny a license regulated by it on the ground that the applicant
9 knowingly made a false statement of fact that is required to be
10 revealed in the application for the license.

11 (e) The Bureau for Private Postsecondary Education, the State
12 Athletic Commission, and the California Horse Racing Board shall
13 develop criteria to aid it, when considering the denial, ~~suspension~~
14 *suspension*, or revocation of a license, to determine whether a
15 crime or act is substantially related to the qualifications, functions,
16 or duties of the business or profession it regulates.

17 (f) (1) The Bureau for Private Postsecondary Education, the
18 State Athletic Commission, and the California Horse Racing Board
19 shall develop criteria to evaluate the rehabilitation of a person
20 either when:

21 (A) Considering the denial of a license under this section.

22 (B) Considering suspension or revocation of a license under
23 Section 490.

24 (2) The Bureau for Private Postsecondary Education, the State
25 Athletic Commission, and the California Horse Racing Board shall
26 take into account all competent evidence of rehabilitation furnished
27 by the applicant or licensee.

28 (g) Except as otherwise provided by law, following a hearing
29 requested by an applicant pursuant to subdivision (b) of Section
30 485, the Bureau for Private Postsecondary Education, the State
31 Athletic Commission, and the California Horse Racing Board may
32 take any of the following actions:

33 (1) Grant the license effective upon completion of all licensing
34 requirements by the applicant.

35 (2) Grant the license effective upon completion of all licensing
36 requirements by the applicant, immediately revoke the license,
37 stay the revocation, and impose probationary conditions on the
38 license, which may include suspension.

39 (3) Deny the license.

1 (4) Take other action in relation to denying or granting the
 2 license as the Bureau for Private Postsecondary Education, the
 3 State Athletic Commission, or the California Horse Racing Board,
 4 in its discretion, may deem proper.

5 (h) Notwithstanding any other law, in a proceeding conducted
 6 by the Bureau for Private Postsecondary Education, the State
 7 Athletic Commission, or the California Horse Racing Board to
 8 deny an application for a license or to suspend or revoke a license
 9 or otherwise take disciplinary action against a person who holds
 10 a license, upon the ground that the applicant or the licensee has
 11 been convicted of a crime substantially related to the qualifications,
 12 functions, and duties of the licensee in question, the record of
 13 conviction of the crime shall be conclusive evidence of the fact
 14 that the conviction occurred, but only of that fact, and the Bureau
 15 for Private Postsecondary Education, the State Athletic
 16 Commission, and the California Horse Racing Board may inquire
 17 into the circumstances surrounding the commission of the crime
 18 in order to fix the degree of discipline or to determine if the
 19 conviction is substantially related to the qualifications, functions,
 20 and duties of the licensee in question.

21 (i) Notwithstanding Section 7.5, a conviction within the meaning
 22 of this section means a plea or verdict of guilty or a conviction
 23 following a plea of nolo contendere. Any action that the Bureau
 24 for Private Postsecondary Education, the State Athletic
 25 Commission, or the California Horse Racing Board is permitted
 26 to take following the establishment of a conviction may be taken
 27 when the time for appeal has elapsed, the judgment of conviction
 28 has been affirmed on appeal, or when an order granting probation
 29 is made suspending the imposition of sentence, irrespective of a
 30 subsequent order under the provisions of Section 1203.4, 1203.4a,
 31 1203.41, or 1203.425 of the Penal Code.

32 (j) This section shall become operative on July 1, 2020.

33 *SEC. 4. Section 11345.2 of the Business and Professions Code,*
 34 *as amended by Section 14 of Chapter 995 of the Statutes of 2018,*
 35 *is amended to read:*

36 11345.2. (a) An individual shall not act as a controlling person
 37 for a registrant if any of the following apply:

38 (1) The individual has entered a plea of guilty or no contest to,
 39 or been convicted of, a felony. Notwithstanding subdivision (c) of
 40 Section 480, if the individual’s felony conviction has been

1 dismissed pursuant to Section 1203.4, 1203.4a, ~~or 1203.41~~ 1203.41,
2 or 1203.425 of the Penal Code, the bureau may allow the individual
3 to act as a controlling person.

4 (2) The individual has had a license or certificate to act as an
5 appraiser or to engage in activities related to the transfer of real
6 property refused, denied, canceled, or revoked in this state or any
7 other state.

8 (b) Any individual who acts as a controlling person of an
9 appraisal management company and who enters a plea of guilty
10 or no contest to, or is convicted of, a felony, or who has a license
11 or certificate as an appraiser refused, denied, canceled, or revoked
12 in any other state shall report that fact or cause that fact to be
13 reported to the office, in writing, within 10 days of the date he or
14 she has knowledge of that fact.

15 (c) This section shall become inoperative on July 1, 2020, and,
16 as of January 1, 2021, is repealed.

17 *SEC. 5. Section 11345.2 of the Business and Professions Code,*
18 *as added by Section 15 of Chapter 995 of the Statutes of 2018, is*
19 *amended to read:*

20 11345.2. (a) An individual shall not act as a controlling person
21 for a registrant if any of the following apply:

22 (1) The individual has entered a plea of guilty or no contest to,
23 or been convicted of, a felony. If the individual's felony conviction
24 has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41,
25 ~~or 1203.42~~ 1203.42, or 1203.425 of the Penal Code, the bureau
26 may allow the individual to act as a controlling person.

27 (2) The individual has had a license or certificate to act as an
28 appraiser or to engage in activities related to the transfer of real
29 property refused, denied, canceled, or revoked in this state or any
30 other state.

31 (b) Any individual who acts as a controlling person of an
32 appraisal management company and who enters a plea of guilty
33 or no contest to, or is convicted of, a felony, or who has a license
34 or certificate as an appraiser refused, denied, canceled, or revoked
35 in any other state shall report that fact or cause that fact to be
36 reported to the office, in writing, within 10 days of the date he or
37 she has knowledge of that fact.

38 (c) This section shall become operative on July 1, 2020.

39 *SEC. 6. Section 432.7 of the Labor Code is amended to read:*

1 432.7. (a) (1) An employer, whether a public agency or private
2 individual or corporation, shall not ask an applicant for employment
3 to disclose, through any written form or verbally, information
4 concerning an arrest or detention that did not result in conviction,
5 or information concerning a referral to, and participation in, any
6 pretrial or posttrial diversion program, or concerning a conviction
7 that has been judicially dismissed or ordered sealed pursuant to
8 law, including, but not limited to, Sections 1203.4, 1203.4a,
9 1203.425, 1203.45, and 1210.1 of the Penal Code. An employer
10 also shall not seek from any source whatsoever, or utilize, as a
11 factor in determining any condition of employment including
12 hiring, promotion, termination, or any apprenticeship training
13 program or any other training program leading to employment,
14 any record of arrest or detention that did not result in conviction,
15 or any record regarding a referral to, and participation in, any
16 pretrial or posttrial diversion program, or concerning a conviction
17 that has been judicially dismissed or ordered sealed pursuant to
18 law, including, but not limited to, Sections 1203.4, 1203.4a,
19 1203.425, 1203.45, and 1210.1 of the Penal Code. This section
20 shall not prevent an employer from asking an employee or applicant
21 for employment about an arrest for which the employee or applicant
22 is out on bail or on his or her own recognizance pending trial.

23 (2) An employer, whether a public agency or private individual
24 or corporation, shall not ask an applicant for employment to
25 disclose, through any written form or verbally, information
26 concerning or related to an arrest, detention, processing, diversion,
27 supervision, adjudication, or court disposition that occurred while
28 the person was subject to the process and jurisdiction of the
29 juvenile court. An employer also shall not seek from any source
30 whatsoever, or utilize, as a factor in determining any condition of
31 employment including hiring, promotion, termination, or any
32 apprenticeship training program or any other training program
33 leading to employment, any record concerning or related to an
34 arrest, detention, processing, diversion, supervision, adjudication,
35 or court disposition that occurred while a person was subject to
36 the process and jurisdiction of the juvenile court.

37 (3) For purposes of this section:

38 (A) “Conviction” includes a plea, verdict, or finding of guilt,
39 regardless of whether a sentence is imposed by the court.

1 (B) “Conviction” does not include, and shall not be construed
2 to include, any adjudication by a juvenile court or any other court
3 order or action taken with respect to a person who is under the
4 process and jurisdiction of the juvenile court.

5 (b) This section shall not prohibit the disclosure of the
6 information authorized for release under Sections 13203 and 13300
7 of the Penal Code, to a government agency employing a peace
8 officer. However, the employer shall not determine any condition
9 of employment other than paid administrative leave based solely
10 on an arrest report. The information contained in an arrest report
11 may be used as the starting point for an independent, internal
12 investigation of a peace officer in accordance with Chapter 9.7
13 (commencing with Section 3300) of Division 4 of Title 1 of the
14 Government Code.

15 (c) If a person violates this section, or Article 6 (commencing
16 with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal
17 Code, the applicant may bring an action to recover from that person
18 actual damages or two hundred dollars (\$200), whichever is greater,
19 plus costs, and reasonable attorney’s fees. An intentional violation
20 of this section shall entitle the applicant to treble actual damages,
21 or five hundred dollars (\$500), whichever is greater, plus costs,
22 and reasonable attorney’s fees. An intentional violation of this
23 section is a misdemeanor punishable by a fine not to exceed five
24 hundred dollars (\$500).

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

28 (e) Persons seeking employment or persons already employed
29 as peace officers or persons seeking employment for positions in
30 the Department of Justice or other criminal justice agencies as
31 defined in Section 13101 of the Penal Code are not covered by
32 this section.

33 (f) (1) Except as provided in paragraph (2), this section does
34 not prohibit an employer at a health facility, as defined in Section
35 1250 of the Health and Safety Code, from asking an applicant for
36 employment either of the following:

37 (A) With regard to an applicant for a position with regular access
38 to patients, to disclose an arrest under any section specified in
39 Section 290 of the Penal Code.

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

4 (2) (A) An employer specified in paragraph (1) shall not inquire
5 into information concerning or related to an applicant's arrest,
6 detention, processing, diversion, supervision, adjudication, or court
7 disposition that occurred while the person was subject to the
8 process and jurisdiction of juvenile court law, unless the
9 information concerns an adjudication by the juvenile court in which
10 the applicant has been found by the court to have committed a
11 felony or misdemeanor offense specified in paragraph (1) that
12 occurred within five years preceding the application for
13 employment.

14 (B) Notwithstanding any other provision of this subdivision, an
15 employer specified in paragraph (1) shall not inquire into
16 information concerning or related to an applicant's juvenile offense
17 history that has been sealed by the juvenile court.

18 (3) An employer seeking disclosure of offense history under
19 paragraph (2) shall provide the applicant with a list describing the
20 specific offenses under Section 11590 of the Health and Safety
21 Code or Section 290 of the Penal Code for which disclosure is
22 sought.

23 (g) (1) A peace officer or employee of a law enforcement
24 agency with access to criminal or juvenile offender record
25 information maintained by a local law enforcement criminal or
26 juvenile justice agency shall not knowingly disclose, with intent
27 to affect a person's employment, any information pertaining to an
28 arrest or detention or proceeding that did not result in a conviction,
29 including information pertaining to a referral to, and participation
30 in, any pretrial or posttrial diversion program, to any person not
31 authorized by law to receive that information.

32 (2) Any other person authorized by law to receive criminal or
33 juvenile offender record information maintained by a local law
34 enforcement criminal or juvenile justice agency shall not knowingly
35 disclose any information received pertaining to an arrest or
36 detention or proceeding that did not result in a conviction, including
37 information pertaining to a referral to, and participation in, any
38 pretrial or posttrial diversion program, to any person not authorized
39 by law to receive that information.

1 (3) Except for those specifically referred to in Section 1070 of
2 the Evidence Code, a person who is not authorized by law to
3 receive or possess criminal or juvenile justice records information
4 maintained by a local law enforcement criminal or juvenile justice
5 agency, pertaining to an arrest or other proceeding that did not
6 result in a conviction, including information pertaining to a referral
7 to, and participation in, any pretrial or posttrial diversion program,
8 shall not knowingly receive or possess that information.

9 (h) “A person authorized by law to receive that information,”
10 for purposes of this section, means any person or public agency
11 authorized by a court, statute, or decisional law to receive
12 information contained in criminal or juvenile offender records
13 maintained by a local law enforcement criminal or juvenile justice
14 agency, and includes, but is not limited to, those persons set forth
15 in Section 11105 of the Penal Code, and any person employed by
16 a law enforcement criminal or juvenile justice agency who is
17 required by that employment to receive, analyze, or process
18 criminal or juvenile offender record information.

19 (i) This section does not require the Department of Justice to
20 remove entries relating to an arrest or detention not resulting in
21 conviction from summary criminal history records forwarded to
22 an employer pursuant to law.

23 (j) As used in this section, “pretrial or posttrial diversion
24 program” means any program under Chapter 2.5 (commencing
25 with Section 1000) or Chapter 2.7 (commencing with Section
26 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or
27 13352.5 of the Vehicle Code, Sections 626, 626.5, 654, or 725 of,
28 or Article 20.5 (commencing with Section 790) of Chapter 2 of
29 Part 1 of Division 2 of, the Welfare and Institutions Code, or any
30 other program expressly authorized and described by statute as a
31 diversion program.

32 (k) (1) Subdivision (a) shall not apply to any city, city and
33 county, county, or district, or any officer or official thereof, in
34 screening a prospective concessionaire, or the affiliates and
35 associates of a prospective concessionaire for purposes of
36 consenting to, or approving of, the prospective concessionaire’s
37 application for, or acquisition of, any beneficial interest in a
38 concession, lease, or other property interest.

39 (2) For purposes of this subdivision the following terms apply:

1 (A) “Screening” means a written request for criminal or juvenile
2 history information made to a local law enforcement agency.

3 (B) “Prospective concessionaire” means any individual, general
4 or limited partnership, corporation, trust, association, or other
5 entity that is applying for, or seeking to obtain, a public agency’s
6 consent to, or approval of, the acquisition by that individual or
7 entity of any beneficial ownership interest in any public agency’s
8 concession, lease, or other property right whether directly or
9 indirectly held. However, “prospective concessionaire” does not
10 include any of the following:

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

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

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

19 (D) “Associate” means any individual or entity that shares a
20 common business purpose with the prospective concessionaire
21 with respect to the beneficial ownership interest that is subject to
22 the consent or approval of the city, county, city and county, or
23 district.

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

27 (I) (1) Subdivision (a) does not prohibit a public agency, or any
28 officer or official thereof, from denying consent to, or approval
29 of, a prospective concessionaire’s application for, or acquisition
30 of, any beneficial interest in a concession, lease, or other property
31 interest based on the criminal history information of the prospective
32 concessionaire or the affiliates or associates of the prospective
33 concessionaire that show any criminal conviction for offenses
34 involving moral turpitude. Criminal history information for
35 purposes of this subdivision includes any criminal history
36 information obtained pursuant to Section 11105 or 13300 of the
37 Penal Code.

38 (2) In considering criminal history information, a public agency
39 shall consider the crime for which the prospective concessionaire
40 or the affiliates or associates of the prospective concessionaire was

1 convicted only if that crime relates to the specific business that is
2 proposed to be conducted by the prospective concessionaire.

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

8 (4) (A) If the prospective concessionaire submits a written
9 request to the public agency within 10 days of the date of the notice
10 of denial, the public agency shall review its decision with regard
11 to any corrected record or other evidence presented by the
12 prospective concessionaire as to the accuracy or incompleteness
13 of the criminal history information utilized by the public agency
14 in making its original decision.

15 (B) The prospective concessionaire shall submit the copy or the
16 corrected record of any other evidence to the public agency within
17 90 days of a request for review. The public agency shall render its
18 decision within 20 days of the submission of evidence by the
19 prospective concessionaire.

20 (m) (1) Paragraph (1) of subdivision (a) does not prohibit an
21 employer, whether a public agency or private individual or
22 corporation, from asking an applicant about, or seeking from any
23 source information regarding, a particular conviction of the
24 applicant if, pursuant to Section 1829 of Title 12 of the United
25 States Code or any other federal law, federal regulation, or state
26 law, any of the following apply:

27 (A) The employer is required by law to obtain information
28 regarding the particular conviction of the applicant, regardless of
29 whether that conviction has been expunged, judicially ordered
30 sealed, statutorily eradicated, or judicially dismissed following
31 probation.

32 (B) The applicant would be required to possess or use a firearm
33 in the course of his or her employment.

34 (C) An individual with that particular conviction is prohibited
35 by law from holding the position sought by the applicant, regardless
36 of whether that conviction has been expunged, judicially ordered
37 sealed, statutorily eradicated, or judicially dismissed following
38 probation.

39 (D) The employer is prohibited by law from hiring an applicant
40 who has that particular conviction, regardless of whether that

1 conviction has been expunged, judicially ordered sealed, statutorily
2 eradicated, or judicially dismissed following probation.

3 (2) For purposes of this subdivision, “particular conviction”
4 means a conviction for specific criminal conduct or a category of
5 criminal offenses prescribed by any federal law, federal regulation,
6 or state law that contains requirements, exclusions, or both,
7 expressly based on that specific criminal conduct or category of
8 criminal offenses.

9 (n) Nothing in this section shall prohibit an employer, whether
10 a public agency or private individual or corporation, required by
11 state, federal, or local law to conduct criminal background checks
12 for employment purposes or to restrict employment based on
13 criminal history from complying with those requirements, or to
14 prohibit the employer from seeking or receiving an applicant’s
15 criminal history report that has been obtained pursuant to
16 procedures otherwise provided for under federal, state, or local
17 law. For purposes of this subdivision, federal law shall include
18 rules or regulations promulgated by a self-regulatory organization,
19 as defined in Section 3(a)(26) of the Securities Exchange Act of
20 1934, pursuant to the authority in Section 19(b) of the Securities
21 Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law
22 11-203).

23 ~~SEC. 4.~~

24 *SEC. 7.* Section 851.93 is added to the Penal Code, to read:

25 851.93. (a) (1) On a weekly basis, the Department of Justice
26 shall review the records in the statewide criminal justice databases,
27 and based on information in the state summary criminal history
28 repository, shall identify persons with records of arrest that meet
29 the criteria set forth in paragraph (2) and are eligible for arrest
30 record relief.

31 (2) A person is eligible for relief pursuant to this section, if the
32 arrest occurred on or after January 1, 1973, and meets any of the
33 following conditions:

34 (A) The arrest was for a misdemeanor offense and the charge
35 was dismissed.

36 (B) The arrest was for a misdemeanor offense, there is no
37 indication that criminal proceedings have been initiated, at least
38 one calendar year has elapsed since the date of the arrest, and no
39 conviction occurred, or the arrestee was acquitted of any charges
40 that arose, from that arrest.

1 (C) The arrest was for an offense that is punishable by
2 imprisonment pursuant to paragraph (1) or (2) of subdivision (h)
3 of Section 1170, there is no indication that criminal proceedings
4 have been initiated, at least three calendar years have elapsed since
5 the date of the arrest, and no conviction occurred, or the arrestee
6 was acquitted of any charges arising, from that arrest.

7 (D) The person successfully completed any of the following,
8 relating to that arrest:

9 (i) A prefiling diversion program, as defined in Section 851.87,
10 administered by a prosecuting attorney in lieu of filing an
11 accusatory pleading.

12 (ii) A drug diversion program administered by a superior court
13 pursuant to Section 1000.5, or a deferred entry of judgment
14 program pursuant to Section 1000 or 1000.8.

15 (iii) A pretrial diversion program, pursuant to Section 1000.4.

16 (iv) A diversion program, pursuant to Section 1001.9.

17 (v) Any diversion program described in Chapter 2.8
18 (commencing with Section 1001.20), Chapter 2.8A (commencing
19 with Section 1001.35), Chapter 2.81 (commencing with Section
20 1001.40), Chapter 2.9 (commencing with Section 1001.50), Chapter
21 2.9A (commencing with Section 1001.60), Chapter 2.9B
22 (commencing with Section 1001.70), Chapter 2.9C (commencing
23 with Section 1001.80), Chapter 2.9D (commencing with Section
24 1001.81), or Chapter 2.92 (commencing with Section 1001.85),
25 of Title 6.

26 (b) (1) The department shall grant relief to a person identified
27 pursuant to subdivision (a), without requiring a petition or motion
28 by a party for that relief if the relevant information is present in
29 the department's records.

30 (2) The state summary criminal history information shall
31 include, directly next to or below the entry or entries regarding the
32 person's arrest record, a note stating "arrest relief granted," listing
33 the date that the department granted relief, and this section. This
34 note shall be included in all statewide criminal databases with a
35 record of the arrest.

36 (3) Except as otherwise provided in subdivision (d), an arrest
37 for which arrest relief has been granted is deemed not to have
38 occurred, and a person who has been granted arrest relief is released
39 from any penalties and disabilities resulting from the arrest, and
40 may answer any question relating to that arrest accordingly.

1 (c) On a weekly basis, the department shall electronically submit
2 a notice to the superior court having jurisdiction over the criminal
3 case, informing the court of all cases for which a complaint was
4 filed in that jurisdiction and for which relief was granted pursuant
5 to this section. Commencing on February 1, 2021, for any record
6 retained by the court pursuant to Section 68152 of the Government
7 Code, except as provided in subdivision (d), the court shall not
8 disclose information concerning an arrest that is granted relief
9 pursuant to this section to any person or entity, in any format,
10 except to the person whose arrest was granted relief or a criminal
11 justice agency, as defined in Section 851.92.

12 (d) Relief granted pursuant to this section is subject to the
13 following conditions:

14 (1) Arrest relief does not relieve a person of the obligation to
15 disclose an arrest in response to a direct question contained in a
16 questionnaire or application for employment as a peace officer, as
17 defined in Section 830.

18 (2) Relief granted pursuant to this section has no effect on the
19 ability of a criminal justice agency, as defined in Section 851.92,
20 to access and use records that are granted relief to the same extent
21 that would have been permitted for a criminal justice agency had
22 relief not been granted.

23 (3) Relief granted pursuant to this section does not affect a
24 person's authorization to own, possess, or have in the person's
25 custody or control any firearm, or the person's susceptibility to
26 conviction under Chapter 2 (commencing with Section 29800) of
27 Division 9 of Title 4 of Part 6, if the arrest would otherwise affect
28 this authorization or susceptibility.

29 (4) Relief granted pursuant to this section does not affect any
30 prohibition from holding public office that would otherwise apply
31 under law as a result of the arrest.

32 (5) Relief granted pursuant to this section does not affect the
33 authority to receive, or take adverse action based on, criminal
34 history information, including the authority to receive certified
35 court records received or evaluated pursuant to Section 1522,
36 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
37 pursuant to any statutory or regulatory provisions that incorporate
38 the criteria of those sections.

39 (e) This section shall not limit petitions, motions, or orders for
40 arrest record relief, as required or authorized by any other law,

1 including, but not limited to, Sections 851.87, 851.90, 851.91,
2 1000.4, and 1001.9.

3 (f) The department shall annually publish statistics for each
4 county regarding the total number of arrests granted relief pursuant
5 to this section and the percentage of arrests for which the state
6 summary criminal history information does not include a
7 disposition, on the OpenJustice Web portal, as defined in Section
8 13010.

9 (g) This section shall be operative commencing January 1, 2021.

10 ~~SEC. 5.~~

11 *SEC. 8.* Section 1203.425 is added to the Penal Code,
12 immediately following Section 1203.42, to read:

13 1203.425. (a) (1) On a weekly basis, the Department of Justice
14 shall review the records in the statewide criminal justice databases,
15 and based on information in the state summary criminal history
16 repository and the Supervised Release File, shall identify persons
17 with convictions that meet the criteria set forth in paragraph (2)
18 and are eligible for automatic conviction record relief.

19 (2) A person is eligible for automatic conviction relief pursuant
20 to this section if they meet all of the following conditions:

21 (A) The person is not required to register pursuant to the Sex
22 Offender Registration Act.

23 (B) The person does not have an active record for local, state,
24 or federal supervision in the Supervised Release File.

25 (C) The person is not currently serving a sentence for any
26 offense and does not have any pending criminal charges.

27 (D) Except as otherwise provided in clause (iii) of subparagraph
28 (E), there is no indication that the conviction resulted in a sentence
29 of incarceration in the state prison.

30 (E) The conviction occurred on or after January 1, 1973, and
31 meets one of the following criteria:

32 (i) The defendant was sentenced to probation and, based upon
33 the disposition date and the term of probation specified in the
34 department's records, appears to have completed their term of
35 probation without revocation.

36 (ii) The defendant was convicted of an infraction or
37 misdemeanor, was not granted probation, has completed their
38 sentence, and, based upon the disposition date in the department's
39 record, at least one calendar year has elapsed since the date of
40 judgment.

1 (iii) The defendant was sentenced for a crime that is, or on or
2 before January 1, 2012, would have been, eligible for sentencing
3 pursuant to subdivision (h) of Section 1170, and, based upon the
4 disposition date and the sentence specified in the department's
5 records, it appears that two years have elapsed following the
6 defendant's completion of the sentence.

7 (b) (1) Except as specified in subdivision (h), the department
8 shall grant relief, including dismissal of a conviction, to a person
9 identified pursuant to subdivision (a), without requiring a petition
10 or motion by a party for that relief if the relevant information is
11 present in the department's records.

12 (2) The state summary criminal history information shall
13 include, directly next to or below the entry or entries regarding the
14 person's criminal record, a note stating "relief granted," listing the
15 date that the department granted relief and this section. This note
16 shall be included in all statewide criminal databases with a record
17 of the conviction.

18 (3) Except as otherwise provided in subdivision (d) and in
19 Section 13555 of the Vehicle Code, a person granted conviction
20 relief pursuant to this section shall be released from all penalties
21 and disabilities resulting from the offense of which the person has
22 been convicted.

23 (c) On a weekly basis, the department shall electronically submit
24 a notice to the superior court having jurisdiction over the criminal
25 case, informing the court of all cases for which a complaint was
26 filed in that jurisdiction and for which relief was granted pursuant
27 to this section. Commencing on February 1, 2021, for any record
28 retained by the court pursuant to Section 68152 of the Government
29 Code, except as provided in subdivision (d), the court shall not
30 disclose information concerning a conviction granted relief
31 pursuant to this section or Section 1203.4, 1203.4a, 1203.41, or
32 1203.42, to any person or entity, in any format, except to the person
33 whose conviction was granted relief or a criminal justice agency,
34 as defined in Section 851.92.

35 (d) Relief granted pursuant to this section is subject to the
36 following conditions:

37 (1) Relief granted pursuant to this section does not relieve a
38 person of the obligation to disclose a criminal conviction in
39 response to a direct question contained in a questionnaire or

1 application for employment as a peace officer, as defined in Section
2 830.

3 (2) Relief granted pursuant to this section does not relieve a
4 person of the obligation to disclose the conviction in response to
5 any direct question contained in any questionnaire or application
6 for public office, or for contracting with the California State Lottery
7 Commission.

8 (3) Relief granted pursuant to this section has no effect on the
9 ability of a criminal justice agency, as defined in Section 851.92,
10 to access and use records that are granted relief to the same extent
11 that would have been permitted for a criminal justice agency had
12 relief not been granted.

13 (4) Relief granted pursuant to this section does not limit the
14 jurisdiction of the court over any subsequently filed motion to
15 amend the record, petition or motion for postconviction relief, or
16 collateral attack on a conviction for which relief has been granted
17 pursuant to this section.

18 (5) Relief granted pursuant to this section does not affect a
19 person's authorization to own, possess, or have in the person's
20 custody or control any firearm, or the person's susceptibility to
21 conviction under Chapter 2 (commencing with Section 29800) of
22 Division 9 of Title 4 of Part 6, if the criminal conviction would
23 otherwise affect this authorization or susceptibility.

24 (6) Relief granted pursuant to this section does not affect any
25 prohibition from holding public office that would otherwise apply
26 under law as a result of the criminal conviction.

27 (7) Relief granted pursuant to this section does not affect the
28 authority to receive, or take adverse action based on, criminal
29 history information, including the authority to receive certified
30 court records received or evaluated pursuant to Section 1522,
31 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
32 pursuant to any statutory or regulatory provisions that incorporate
33 the criteria of those sections.

34 (8) Relief granted pursuant to this section does not make eligible
35 a person who is otherwise ineligible to provide, or receive payment
36 for providing, in-home supportive services pursuant to Article 7
37 (commencing with Section 12300) of Chapter 3 of Part 3 of
38 Division 9 of the Welfare and Institutions Code, or pursuant to
39 Section 14132.95, 14132.952, or 14132.956 of the Welfare and
40 Institutions Code.

1 (9) In any subsequent prosecution of the defendant for any other
2 offense, the prior conviction may be pleaded and proved and shall
3 have the same effect as if the relief had not been granted.

4 (e) This section shall not limit petitions, motions, or orders for
5 relief in a criminal case, as required or authorized by any other
6 law, including, but not limited to, Sections 1203.4, 1203.4a,
7 1203.41, and 1203.42.

8 (f) The department shall annually publish statistics for each
9 county regarding the total number of convictions granted relief
10 pursuant to this section and the total number of convictions
11 prohibited from automatic relief pursuant to subdivision (h), on
12 the OpenJustice Web portal, as defined in Section 13010.

13 (g) Subdivisions (a) to (f), inclusive, shall be operative
14 commencing January 1, 2021.

15 (h) ~~For convictions entered on or after January 1, 2018, the~~
16 *(1) The prosecuting attorney or probation department may, no*
17 *later than 90 calendar days before the date of a person's eligibility*
18 *for relief pursuant to this section, file a*~~*motion*~~ *petition to prohibit*
19 *the department from granting automatic relief pursuant to this*
20 *section. The section, based on a showing that granting such relief*
21 *would pose a substantial threat to the public safety.*

22 *(2) The court shall give notice to the defendant and conduct a*
23 *hearing on the motion within 45 days after the motion is filed.*~~*If*~~
24 ~~*the court grants that motion, the court shall report that outcome to*~~
25 ~~*the department, and the department shall not grant relief pursuant*~~
26 ~~*to this section. The person may continue to be eligible for relief*~~
27 ~~*pursuant to Section 1203.4, 1203.4a, 1203.41, or 1203.42, and if*~~
28 ~~*the court subsequently grants such a motion, the court shall report*~~
29 ~~*that outcome to the department and the department shall grant*~~
30 ~~*relief pursuant to the applicable section.*~~

31 *(3) At a hearing on the petition pursuant to this subdivision, the*
32 *defendant, the probation department, the prosecuting attorney,*
33 *and the arresting agency, through the prosecuting attorney, may*
34 *present evidence to the court. Notwithstanding Sections 1538.5*
35 *and 1539, the hearing may be heard and determined upon*
36 *declarations, affidavits, police investigative reports, copies of state*
37 *summary criminal history information and local summary criminal*
38 *history information, or any other evidence submitted by the parties*
39 *that is material, reliable, and relevant.*

1 (4) The prosecutor or probation department has the initial
2 burden of proof to show that granting conviction relief would pose
3 a substantial threat to the public safety. In determining whether
4 granting such relief would pose a substantial threat to the public
5 safety, the court may consider any relevant factors including, but
6 not limited to, either of the following:

7 (A) Declarations or evidence regarding the offense for which
8 a grant of relief is being contested.

9 (B) The defendant's record of arrests and convictions.

10 (5) If the court finds that the prosecutor or probation department
11 has satisfied the burden of proof, the burden shifts to the defendant
12 to show that the hardship of not obtaining relief outweighs the
13 threat to the public safety of providing such relief. In determining
14 whether the defendant's hardship outweighs the threat to the public
15 safety, the court may consider any relevant factors including, but
16 not limited to, either of the following:

17 (A) The hardship to the defendant that has been caused by the
18 conviction and that would be caused if relief is not granted.

19 (B) Declarations or evidence regarding the defendant's good
20 character.

21 (6) If the court grants a petition pursuant to this subdivision,
22 the court shall furnish a disposition report to the Department of
23 Justice pursuant to Section 13151, stating that relief pursuant to
24 this section was denied, and the department shall not grant relief
25 pursuant to this section.

26 (7) A person denied relief pursuant to this section may continue
27 to be eligible for relief pursuant to Section 1203.4, 1203.4a,
28 1203.41, or 1203.42. If the court subsequently grants relief
29 pursuant to one of those sections, the court shall furnish a
30 disposition report to the Department of Justice pursuant to Section
31 13151, stating that relief was granted pursuant to the applicable
32 section, and the department shall grant relief pursuant to that
33 section.

34 (i) At the time of sentencing, the court shall advise a defendant,
35 either orally or in writing, of the provisions of this section and of
36 the defendant's right, if any, to petition for a certificate of
37 rehabilitation and pardon.

38 ~~SEC. 6.~~

39 SEC. 9. Section 11105 of the Penal Code is amended to read:

1 11105. (a) (1) The Department of Justice shall maintain state
2 summary criminal history information.

3 (2) As used in this section:

4 (A) “State summary criminal history information” means the
5 master record of information compiled by the Attorney General
6 pertaining to the identification and criminal history of a person,
7 such as name, date of birth, physical description, fingerprints,
8 photographs, dates of arrests, arresting agencies and booking
9 numbers, charges, dispositions, sentencing information, and similar
10 data about the person.

11 (B) “State summary criminal history information” does not refer
12 to records and data compiled by criminal justice agencies other
13 than the Attorney General, nor does it refer to records of complaints
14 to or investigations conducted by, or records of intelligence
15 information or security procedures of, the office of the Attorney
16 General and the Department of Justice.

17 (b) The Attorney General shall furnish state summary criminal
18 history information to the following, if needed in the course of
19 their duties, provided that when information is furnished to assist
20 an agency, officer, or official of state or local government, a public
21 utility, or any other entity, in fulfilling employment, certification,
22 or licensing duties, Chapter 1321 of the Statutes of 1974 and
23 Section 432.7 of the Labor Code shall apply:

24 (1) The courts of the state.

25 (2) Peace officers of the state, as defined in Section 830.1,
26 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
27 830.3, subdivision (a) of Section 830.31, and subdivisions (a) and
28 (b) of Section 830.5.

29 (3) District attorneys of the state.

30 (4) Prosecuting city attorneys or city prosecutors of a city within
31 the state.

32 (5) City attorneys pursuing civil gang injunctions pursuant to
33 Section 186.22a, or drug abatement actions pursuant to Section
34 3479 or 3480 of the Civil Code, or Section 11571 of the Health
35 and Safety Code.

36 (6) Probation officers of the state.

37 (7) Parole officers of the state.

38 (8) A public defender or attorney of record when representing
39 a person in proceedings upon a petition for a certificate of
40 rehabilitation and pardon pursuant to Section 4852.08.

1 (9) A public defender or attorney of record when representing
2 a person in a criminal case or a juvenile delinquency proceeding,
3 including all appeals and postconviction motions, or a parole,
4 mandatory supervision pursuant to paragraph (5) of subdivision
5 (h) of Section 1170, or postrelease community supervision
6 revocation or revocation extension proceeding, if the information
7 is requested in the course of representation.

8 (10) An agency, officer, or official of the state if the state
9 summary criminal history information is required to implement a
10 statute or regulation that expressly refers to specific criminal
11 conduct applicable to the subject person of the state summary
12 criminal history information, and contains requirements or
13 exclusions, or both, expressly based upon that specified criminal
14 conduct. The agency, officer, or official of the state authorized by
15 this paragraph to receive state summary criminal history
16 information may also transmit fingerprint images and related
17 information to the Department of Justice to be transmitted to the
18 Federal Bureau of Investigation.

19 (11) A city or county, city and county, district, or an officer or
20 official thereof if access is needed in order to assist that agency,
21 officer, or official in fulfilling employment, certification, or
22 licensing duties, and if the access is specifically authorized by the
23 city council, board of supervisors, or governing board of the city,
24 county, or district if the state summary criminal history information
25 is required to implement a statute, ordinance, or regulation that
26 expressly refers to specific criminal conduct applicable to the
27 subject person of the state summary criminal history information,
28 and contains requirements or exclusions, or both, expressly based
29 upon that specified criminal conduct. The city or county, city and
30 county, district, or the officer or official thereof authorized by this
31 paragraph may also transmit fingerprint images and related
32 information to the Department of Justice to be transmitted to the
33 Federal Bureau of Investigation.

34 (12) The subject of the state summary criminal history
35 information under procedures established under Article 5
36 (commencing with Section 11120).

37 (13) A person or entity when access is expressly authorized by
38 statute if the criminal history information is required to implement
39 a statute or regulation that expressly refers to specific criminal
40 conduct applicable to the subject person of the state summary

1 criminal history information, and contains requirements or
2 exclusions, or both, expressly based upon that specified criminal
3 conduct.

4 (14) Health officers of a city, county, city and county, or district
5 when in the performance of their official duties enforcing Section
6 120175 of the Health and Safety Code.

7 (15) A managing or supervising correctional officer of a county
8 jail or other county correctional facility.

9 (16) A humane society, or society for the prevention of cruelty
10 to animals, for the specific purpose of complying with Section
11 14502 of the Corporations Code for the appointment of humane
12 officers.

13 (17) Local child support agencies established by Section 17304
14 of the Family Code. When a local child support agency closes a
15 support enforcement case containing state summary criminal
16 history information, the agency shall delete or purge from the file
17 and destroy any documents or information concerning or arising
18 from offenses for or of which the parent has been arrested, charged,
19 or convicted, other than for offenses related to the parent's having
20 failed to provide support for minor children, consistent with the
21 requirements of Section 17531 of the Family Code.

22 (18) County child welfare agency personnel who have been
23 delegated the authority of county probation officers to access state
24 summary criminal history information pursuant to Section 272 of
25 the Welfare and Institutions Code for the purposes specified in
26 Section 16504.5 of the Welfare and Institutions Code. Information
27 from criminal history records provided pursuant to this subdivision
28 shall not be used for a purpose other than those specified in this
29 section and Section 16504.5 of the Welfare and Institutions Code.
30 When an agency obtains records both on the basis of name checks
31 and fingerprint checks, final placement decisions shall be based
32 only on the records obtained pursuant to the fingerprint check.

33 (19) The court of a tribe, or court of a consortium of tribes, that
34 has entered into an agreement with the state pursuant to Section
35 10553.1 of the Welfare and Institutions Code. This information
36 may be used only for the purposes specified in Section 16504.5
37 of the Welfare and Institutions Code and for tribal approval or
38 tribal licensing of foster care or adoptive homes. Article 6
39 (commencing with Section 11140) shall apply to officers, members,

1 and employees of a tribal court receiving state summary criminal
2 history information pursuant to this section.

3 (20) Child welfare agency personnel of a tribe or consortium
4 of tribes that has entered into an agreement with the state pursuant
5 to Section 10553.1 of the Welfare and Institutions Code and to
6 whom the state has delegated duties under paragraph (2) of
7 subdivision (a) of Section 272 of the Welfare and Institutions Code.
8 The purposes for use of the information shall be for the purposes
9 specified in Section 16504.5 of the Welfare and Institutions Code
10 and for tribal approval or tribal licensing of foster care or adoptive
11 homes. When an agency obtains records on the basis of name
12 checks and fingerprint checks, final placement decisions shall be
13 based only on the records obtained pursuant to the fingerprint
14 check. Article 6 (commencing with Section 11140) shall apply to
15 child welfare agency personnel receiving criminal record offender
16 information pursuant to this section.

17 (21) An officer providing conservatorship investigations
18 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
19 Institutions Code.

20 (22) A court investigator providing investigations or reviews
21 in conservatorships pursuant to Section 1826, 1850, 1851, or
22 2250.6 of the Probate Code.

23 (23) A person authorized to conduct a guardianship investigation
24 pursuant to Section 1513 of the Probate Code.

25 (24) A humane officer pursuant to Section 14502 of the
26 Corporations Code for the purposes of performing the officer's
27 duties.

28 (25) A public agency described in subdivision (b) of Section
29 15975 of the Government Code, for the purpose of oversight and
30 enforcement policies with respect to its contracted providers.

31 (26) (A) A state entity, or its designee, that receives federal tax
32 information. A state entity or its designee that is authorized by this
33 paragraph to receive state summary criminal history information
34 also may transmit fingerprint images and related information to
35 the Department of Justice to be transmitted to the Federal Bureau
36 of Investigation for the purpose of the state entity or its designee
37 obtaining federal level criminal offender record information from
38 the Department of Justice. This information shall be used only for
39 the purposes set forth in Section 1044 of the Government Code.

1 (B) For purposes of this paragraph, “federal tax information,”
 2 “state entity” and “designee” are as defined in paragraphs (1), (2),
 3 and (3), respectively, of subdivision (f) of Section 1044 of the
 4 Government Code.

5 (c) The Attorney General may furnish state summary criminal
 6 history information and, when specifically authorized by this
 7 subdivision, federal level criminal history information upon a
 8 showing of a compelling need to any of the following, provided
 9 that when information is furnished to assist an agency, officer, or
 10 official of state or local government, a public utility, or any other
 11 entity in fulfilling employment, certification, or licensing duties,
 12 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
 13 Labor Code shall apply:

14 (1) A public utility, as defined in Section 216 of the Public
 15 Utilities Code, that operates a nuclear energy facility when access
 16 is needed in order to assist in employing persons to work at the
 17 facility, provided that, if the Attorney General supplies the data,
 18 the Attorney General shall furnish a copy of the data to the person
 19 to whom the data relates.

20 (2) To a peace officer of the state other than those included in
 21 subdivision (b).

22 (3) To an illegal dumping enforcement officer as defined in
 23 subdivision (j) of Section 830.7.

24 (4) To a peace officer of another country.

25 (5) To public officers, other than peace officers, of the United
 26 States, other states, or possessions or territories of the United
 27 States, provided that access to records similar to state summary
 28 criminal history information is expressly authorized by a statute
 29 of the United States, other states, or possessions or territories of
 30 the United States if the information is needed for the performance
 31 of their official duties.

32 (6) To a person when disclosure is requested by a probation,
 33 parole, or peace officer with the consent of the subject of the state
 34 summary criminal history information and for purposes of
 35 furthering the rehabilitation of the subject.

36 (7) The courts of the United States, other states, or territories
 37 or possessions of the United States.

38 (8) Peace officers of the United States, other states, or territories
 39 or possessions of the United States.

1 (9) To an individual who is the subject of the record requested
2 if needed in conjunction with an application to enter the United
3 States or a foreign nation.

4 (10) (A) (i) A public utility, as defined in Section 216 of the
5 Public Utilities Code, or a cable corporation as defined in
6 subparagraph (B), if receipt of criminal history information is
7 needed in order to assist in employing current or prospective
8 employees, contract employees, or subcontract employees who,
9 in the course of their employment, may be seeking entrance to
10 private residences or adjacent grounds. The information provided
11 shall be limited to the record of convictions and arrests for which
12 the person is released on bail or on their own recognizance pending
13 trial.

14 (ii) If the Attorney General supplies the data pursuant to this
15 paragraph, the Attorney General shall furnish a copy of the data
16 to the current or prospective employee to whom the data relates.

17 (iii) State summary criminal history information is confidential
18 and the receiving public utility or cable corporation shall not
19 disclose its contents, other than for the purpose for which it was
20 acquired. The state summary criminal history information in the
21 possession of the public utility or cable corporation and all copies
22 made from it shall be destroyed not more than 30 days after
23 employment or promotion or transfer is denied or granted, except
24 for those cases where a current or prospective employee is out on
25 bail or on their own recognizance pending trial, in which case the
26 state summary criminal history information and all copies shall be
27 destroyed not more than 30 days after the case is resolved.

28 (iv) A violation of this paragraph is a misdemeanor, and shall
29 give the current or prospective employee who is injured by the
30 violation a cause of action against the public utility or cable
31 corporation to recover damages proximately caused by the
32 violations. A public utility's or cable corporation's request for
33 state summary criminal history information for purposes of
34 employing current or prospective employees who may be seeking
35 entrance to private residences or adjacent grounds in the course
36 of their employment shall be deemed a "compelling need" as
37 required to be shown in this subdivision.

38 (v) This section shall not be construed as imposing a duty upon
39 public utilities or cable corporations to request state summary
40 criminal history information on current or prospective employees.

1 (B) For purposes of this paragraph, “cable corporation” means
2 a corporation or firm that transmits or provides television,
3 computer, or telephone services by cable, digital, fiber optic,
4 satellite, or comparable technology to subscribers for a fee.

5 (C) Requests for federal level criminal history information
6 received by the Department of Justice from entities authorized
7 pursuant to subparagraph (A) shall be forwarded to the Federal
8 Bureau of Investigation by the Department of Justice. Federal level
9 criminal history information received or compiled by the
10 Department of Justice may then be disseminated to the entities
11 referenced in subparagraph (A), as authorized by law.

12 (11) To a campus of the California State University or the
13 University of California, or a four-year college or university
14 accredited by a regional accreditation organization approved by
15 the United States Department of Education, if needed in
16 conjunction with an application for admission by a convicted felon
17 to a special education program for convicted felons, including, but
18 not limited to, university alternatives and halfway houses. Only
19 conviction information shall be furnished. The college or university
20 may require the convicted felon to be fingerprinted, and any inquiry
21 to the department under this section shall include the convicted
22 felon’s fingerprints and any other information specified by the
23 department.

24 (12) To a foreign government, if requested by the individual
25 who is the subject of the record requested, if needed in conjunction
26 with the individual’s application to adopt a minor child who is a
27 citizen of that foreign nation. Requests for information pursuant
28 to this paragraph shall be in accordance with the process described
29 in Sections 11122 to 11124, inclusive. The response shall be
30 provided to the foreign government or its designee and to the
31 individual who requested the information.

32 (d) Whenever an authorized request for state summary criminal
33 history information pertains to a person whose fingerprints are on
34 file with the Department of Justice and the department has no
35 criminal history of that person, and the information is to be used
36 for employment, licensing, or certification purposes, the fingerprint
37 card accompanying the request for information, if any, may be
38 stamped “no criminal record” and returned to the person or entity
39 making the request.

1 (e) Whenever state summary criminal history information is
2 furnished as the result of an application and is to be used for
3 employment, licensing, or certification purposes, the Department
4 of Justice may charge the person or entity making the request a
5 fee that it determines to be sufficient to reimburse the department
6 for the cost of furnishing the information. In addition, the
7 Department of Justice may add a surcharge to the fee to fund
8 maintenance and improvements to the systems from which the
9 information is obtained. Notwithstanding any other law, a person
10 or entity required to pay a fee to the department for information
11 received under this section may charge the applicant a fee sufficient
12 to reimburse the person or entity for this expense. All moneys
13 received by the department pursuant to this section, Sections
14 11105.3 and 26190, and former Section 13588 of the Education
15 Code shall be deposited in a special account in the General Fund
16 to be available for expenditure by the department to offset costs
17 incurred pursuant to those sections and for maintenance and
18 improvements to the systems from which the information is
19 obtained upon appropriation by the Legislature.

20 (f) Whenever there is a conflict, the processing of criminal
21 fingerprints and fingerprints of applicants for security guard or
22 alarm agent registrations or firearms qualification permits
23 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
24 of the Business and Professions Code shall take priority over the
25 processing of other applicant fingerprints.

26 (g) It is not a violation of this section to disseminate statistical
27 or research information obtained from a record, provided that the
28 identity of the subject of the record is not disclosed.

29 (h) It is not a violation of this section to include information
30 obtained from a record in (1) a transcript or record of a judicial or
31 administrative proceeding or (2) any other public record if the
32 inclusion of the information in the public record is authorized by
33 a court, statute, or decisional law.

34 (i) Notwithstanding any other law, the Department of Justice
35 or a state or local law enforcement agency may require the
36 submission of fingerprints for the purpose of conducting state
37 summary criminal history information checks that are authorized
38 by law.

39 (j) The state summary criminal history information shall include
40 any finding of mental incompetence pursuant to Chapter 6

1 (commencing with Section 1367) of Title 10 of Part 2 arising out
2 of a complaint charging a felony offense specified in Section 290.

3 (k) (1) This subdivision shall apply whenever state or federal
4 summary criminal history information is furnished by the
5 Department of Justice as the result of an application by an
6 authorized agency or organization and the information is to be
7 used for peace officer employment or certification purposes. As
8 used in this subdivision, a peace officer is defined in Chapter 4.5
9 (commencing with Section 830) of Title 3 of Part 2.

10 (2) Notwithstanding any other law, whenever state summary
11 criminal history information is initially furnished pursuant to
12 paragraph (1), the Department of Justice shall disseminate the
13 following information:

14 (A) Every conviction rendered against the applicant.

15 (B) Every arrest for an offense for which the applicant is
16 presently awaiting trial, whether the applicant is incarcerated or
17 has been released on bail or on their own recognizance pending
18 trial.

19 (C) Every arrest or detention, except for an arrest or detention
20 resulting in an exoneration, provided, however, that where the
21 records of the Department of Justice do not contain a disposition
22 for the arrest, the Department of Justice first makes a genuine effort
23 to determine the disposition of the arrest.

24 (D) Every successful diversion.

25 (E) Every date and agency name associated with all retained
26 peace officer or nonsworn law enforcement agency employee
27 preemployment criminal offender record information search
28 requests.

29 (F) Sex offender registration status of the applicant.

30 (G) Sentencing information, if present in the department's
31 records at the time of the response.

32 (l) (1) This subdivision shall apply whenever state or federal
33 summary criminal history information is furnished by the
34 Department of Justice as the result of an application by a criminal
35 justice agency or organization as defined in Section 13101, and
36 the information is to be used for criminal justice employment,
37 licensing, or certification purposes.

38 (2) Notwithstanding any other law, whenever state summary
39 criminal history information is initially furnished pursuant to

1 paragraph (1), the Department of Justice shall disseminate the
2 following information:

3 (A) Every conviction rendered against the applicant.

4 (B) Every arrest for an offense for which the applicant is
5 presently awaiting trial, whether the applicant is incarcerated or
6 has been released on bail or on their own recognizance pending
7 trial.

8 (C) Every arrest for an offense for which the records of the
9 Department of Justice do not contain a disposition or which did
10 not result in a conviction, provided that the Department of Justice
11 first makes a genuine effort to determine the disposition of the
12 arrest. However, information concerning an arrest shall not be
13 disclosed if the records of the Department of Justice indicate or if
14 the genuine effort reveals that the subject was exonerated,
15 successfully completed a diversion or deferred entry of judgment
16 program, or the arrest was deemed a detention, or the subject was
17 granted relief pursuant to Section 851.91.

18 (D) Every date and agency name associated with all retained
19 peace officer or nonsworn law enforcement agency employee
20 preemployment criminal offender record information search
21 requests.

22 (E) Sex offender registration status of the applicant.

23 (F) Sentencing information, if present in the department's
24 records at the time of the response.

25 (m) (1) This subdivision shall apply whenever state or federal
26 summary criminal history information is furnished by the
27 Department of Justice as the result of an application by an
28 authorized agency or organization pursuant to Section 1522,
29 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
30 a statute that incorporates the criteria of any of those sections or
31 this subdivision by reference, and the information is to be used for
32 employment, licensing, or certification purposes.

33 (2) Notwithstanding any other law, whenever state summary
34 criminal history information is initially furnished pursuant to
35 paragraph (1), the Department of Justice shall disseminate the
36 following information:

37 (A) Every conviction of an offense rendered against the
38 applicant, except a conviction for which relief has been granted
39 pursuant to Section 1203.49.

1 (B) Every arrest for an offense for which the applicant is
2 presently awaiting trial, whether the applicant is incarcerated or
3 has been released on bail or on their own recognizance pending
4 trial.

5 (C) Every arrest for an offense for which the Department of
6 Social Services is required by paragraph (1) of subdivision (a) of
7 Section 1522 of the Health and Safety Code to determine if an
8 applicant has been arrested. However, if the records of the
9 Department of Justice do not contain a disposition for an arrest,
10 the Department of Justice shall first make a genuine effort to
11 determine the disposition of the arrest.

12 (D) Sex offender registration status of the applicant.

13 (E) Sentencing information, if present in the department's
14 records at the time of the response.

15 (3) Notwithstanding the requirements of the sections referenced
16 in paragraph (1) of this subdivision, the Department of Justice
17 shall not disseminate information about an arrest subsequently
18 deemed a detention or an arrest that resulted in the successful
19 completion of a diversion program, exoneration, or a grant of relief
20 pursuant to Section 851.91.

21 (n) (1) This subdivision shall apply whenever state or federal
22 summary criminal history information, to be used for employment,
23 licensing, or certification purposes, is furnished by the Department
24 of Justice as the result of an application by an authorized agency,
25 organization, or individual pursuant to any of the following:

26 (A) Paragraph (10) of subdivision (c), when the information is
27 to be used by a cable corporation.

28 (B) Section 11105.3 or 11105.4.

29 (C) Section 15660 of the Welfare and Institutions Code.

30 (D) A statute that incorporates the criteria of any of the statutory
31 provisions listed in subparagraph (A), (B), or (C), or of this
32 subdivision, by reference.

33 (2) With the exception of applications submitted by
34 transportation companies authorized pursuant to Section 11105.3,
35 and notwithstanding any other law, whenever state summary
36 criminal history information is initially furnished pursuant to
37 paragraph (1), the Department of Justice shall disseminate the
38 following information:

39 (A) Every conviction, except a conviction for which relief has
40 been granted pursuant to Section 1203.49, rendered against the

1 applicant for a violation or attempted violation of an offense
2 specified in subdivision (a) of Section 15660 of the Welfare and
3 Institutions Code. However, with the exception of those offenses
4 for which registration is required pursuant to Section 290, the
5 Department of Justice shall not disseminate information pursuant
6 to this subdivision unless the conviction occurred within 10 years
7 of the date of the agency's request for information or the conviction
8 is over 10 years old but the subject of the request was incarcerated
9 within 10 years of the agency's request for information.

10 (B) Every arrest for a violation or attempted violation of an
11 offense specified in subdivision (a) of Section 15660 of the Welfare
12 and Institutions Code for which the applicant is presently awaiting
13 trial, whether the applicant is incarcerated or has been released on
14 bail or on their own recognizance pending trial.

15 (C) Sex offender registration status of the applicant.

16 (D) Sentencing information, if present in the department's
17 records at the time of the response.

18 (o) (1) This subdivision shall apply whenever state or federal
19 summary criminal history information is furnished by the
20 Department of Justice as the result of an application by an
21 authorized agency or organization pursuant to Section 379 or 550
22 of the Financial Code, or a statute that incorporates the criteria of
23 either of those sections or this subdivision by reference, and the
24 information is to be used for employment, licensing, or certification
25 purposes.

26 (2) Notwithstanding any other law, whenever state summary
27 criminal history information is initially furnished pursuant to
28 paragraph (1), the Department of Justice shall disseminate the
29 following information:

30 (A) Every conviction rendered against the applicant for a
31 violation or attempted violation of an offense specified in Section
32 550 of the Financial Code, except a conviction for which relief
33 has been granted pursuant to Section 1203.49.

34 (B) Every arrest for a violation or attempted violation of an
35 offense specified in Section 550 of the Financial Code for which
36 the applicant is presently awaiting trial, whether the applicant is
37 incarcerated or has been released on bail or on their own
38 recognizance pending trial.

39 (C) Sentencing information, if present in the department's
40 records at the time of the response.

1 (p) (1) This subdivision shall apply whenever state or federal
2 criminal history information is furnished by the Department of
3 Justice as the result of an application by an agency, organization,
4 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
5 by a transportation company authorized pursuant to Section
6 11105.3, or a statute that incorporates the criteria of that section
7 or this subdivision by reference, and the information is to be used
8 for employment, licensing, or certification purposes.

9 (2) Notwithstanding any other law, whenever state summary
10 criminal history information is initially furnished pursuant to
11 paragraph (1), the Department of Justice shall disseminate the
12 following information:

13 (A) Every conviction rendered against the applicant, except a
14 conviction for which relief has been granted pursuant to Section
15 1203.4, 1203.4a, 1203.41, 1203.42, 1203.425, or 1203.49.

16 (B) Every arrest for an offense for which the applicant is
17 presently awaiting trial, whether the applicant is incarcerated or
18 has been released on bail or on their own recognizance pending
19 trial.

20 (C) Sex offender registration status of the applicant.

21 (D) Sentencing information, if present in the department's
22 records at the time of the response.

23 (q) All agencies, organizations, or individuals defined in
24 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
25 Department of Justice for subsequent notification pursuant to
26 Section 11105.2. This subdivision shall not supersede sections that
27 mandate an agency, organization, or individual to contract with
28 the Department of Justice for subsequent notification pursuant to
29 Section 11105.2.

30 (r) This section does not require the Department of Justice to
31 cease compliance with any other statutory notification
32 requirements.

33 (s) The provisions of Section 50.12 of Title 28 of the Code of
34 Federal Regulations are to be followed in processing federal
35 criminal history information.

36 (t) Whenever state or federal summary criminal history
37 information is furnished by the Department of Justice as the result
38 of an application by an authorized agency, organization, or
39 individual defined in subdivisions (k) to (p), inclusive, and the
40 information is to be used for employment, licensing, or certification

1 purposes, the authorized agency, organization, or individual shall
2 expeditiously furnish a copy of the information to the person to
3 whom the information relates if the information is a basis for an
4 adverse employment, licensing, or certification decision. When
5 furnished other than in person, the copy shall be delivered to the
6 last contact information provided by the applicant.

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**Agenda Item 4
August 27, 2019**

Review, Discussion and Possible Action Regarding SB 53 (Wilk) Open Meetings

Purpose of the item

This agenda item has been included to provide the Committee with an update on SB 53 (Wilk).

Action(s) requested

N/A

Background

Board staff is monitoring and tracking several bills introduced during the current two-year legislative session.

SB 53 (Wilk) would modify the Bagley-Keene Open meeting Act (Bagley-Keene) to require two-member advisory committees of a “state body” to hold open, public meetings if at least one member of the advisory committee is supported by state funds.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- SB 53 bill text

AMENDED IN SENATE MARCH 5, 2019

SENATE BILL

No. 53

Introduced by Senator Wilk

~~(Coauthor: Assembly Member Lackey)~~

(Coauthors: Senators Bates, Glazer, Jones, and Portantino)

(Coauthors: Assembly Members Choi, Gallagher, Lackey, Mathis, and Patterson)

December 10, 2018

An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

legislative counsel's digest

SB 53, as amended, Wilk. Open meetings.

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions.

This bill would specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in ~~his or her~~ *their* official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 11121 of the Government Code is
 2 amended to read:
 3 11121. As used in this article, “state body” means each of the
 4 following:
 5 (a) Every state board, or commission, or similar multimember
 6 body of the state that is created by statute or required by law to
 7 conduct official meetings and every commission created by
 8 executive order.
 9 (b) A board, commission, committee, or similar multimember
 10 body that exercises any authority of a state body delegated to it by
 11 that state body.
 12 (c) An advisory board, advisory commission, advisory
 13 committee, advisory subcommittee, or similar multimember
 14 advisory body of a state body, if created by formal action of the
 15 state body or of any member of the state body, and if the advisory
 16 body so created consists of three or more persons, except as
 17 provided in subdivision (d).
 18 (d) A board, commission, committee, or similar multimember
 19 body on which a member of a body that is a state body pursuant
 20 to this section serves in ~~his or her~~ *their* official capacity as a
 21 representative of that state body and that is supported, in whole or
 22 in part, by funds provided by the state body, whether the
 23 multimember body is organized and operated by the state body or
 24 by a private corporation.
 25 (e) Notwithstanding subdivision (a) of Section 11121.1, the
 26 State Bar of California, as described in Section 6001 of the
 27 Business and Professions Code. This subdivision shall become
 28 operative on April 1, 2016.
 29 SEC. 2. This act is an urgency statute necessary for the
 30 immediate preservation of the public peace, health, or safety within
 31 the meaning of Article IV of the California Constitution and shall
 32 go into immediate effect. The facts constituting the necessity are:

1 In order to avoid unnecessary litigation and ensure the people's
2 right to access the meetings of public bodies pursuant to Section
3 3 of Article 1 of the California Constitution, it is necessary that
4 this act take effect immediately.

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**Agenda Item 5
August 27, 2019**

**Review, Discussion and Possible Action Regarding SB 425 (Hill) Health Care
Practitioners: Licensee's File: Probationary Physician's and Surgeon's
Certificate: Unprofessional Conduct**

Purpose of the item

This agenda item has been included to provide the Committee with an update on SB 425 (Hill).

Action(s) requested

N/A

Background

Board staff is monitoring and tracking several bills introduced during the current two-year legislative session.

SB 425 (Hill) would require every health facility, clinic or other entities with any arrangement authorizing a licensed health care professional to provide care for patients, to report allegations of sexual abuse or misconduct by a licensed health care practitioner to the appropriate licensing board within 15 days and would impose a fine for failure to report.

Recommendation(s)

N/A

Next Step

N/A

Attachment(s)

- SB 425 bill text

AMENDED IN ASSEMBLY JUNE 27, 2019

AMENDED IN ASSEMBLY JUNE 17, 2019

AMENDED IN SENATE MAY 21, 2019

AMENDED IN SENATE APRIL 30, 2019

AMENDED IN SENATE APRIL 11, 2019

SENATE BILL

No. 425

Introduced by Senator Hill

February 21, 2019

An act to amend Sections 800, 2221, and 2234 of, and to add Section 805.8 to, the Business and Professions Code, relating to healing arts.

legislative counsel's digest

SB 425, as amended, Hill. Health care practitioners: licensee's file: probationary physician's and surgeon's certificate: unprofessional conduct.

Existing law requires the Medical Board of California and specified other boards responsible for the licensure, regulation, and discipline of health care practitioners to separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board, including prescribed historical information for each licensee. Existing law makes the contents of any central file that are not public records confidential, except that the licensee or their counsel or a representative are authorized to inspect and have copies made of the licensee's complete file other than the disclosure of the identity of an information source. Existing law authorizes a board to protect an information source by providing a copy of the material with

only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material.

This bill would delete the specification that the summary be comprehensive.

Existing law establishes a peer review process for certain healing arts licentiates, as defined, and requires the chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic to report specified information, including the denial or revocation of staff privileges, as defined, for a medical disciplinary cause or reason, within 15 days of the denial or revocation to the relevant state licensing agency. Existing law makes a violation of this reporting requirement punishable by a civil fine.

This bill would require any health care facility, as defined, or other entity that makes any arrangement under which a healing arts licensee is allowed to practice or provide care for patients to report any allegation of sexual abuse or sexual misconduct, as defined, made against a healing arts licensee by a patient, if the patient or the patient's representative makes the allegation in writing, to the relevant state licensing agency within 15 days of receiving the written allegation and would require the relevant agency to investigate the circumstances underlying a received report. The bill would require such a report to be kept confidential and, with certain exceptions, such a report would not be subject to discovery or disclosure in a disciplinary hearing. The bill would make a willful failure to file the report by a health care facility or other entity punishable by a civil fine not to exceed \$100,000 per violation and any other failure to make that report punishable by a civil fine not to exceed \$50,000 per violation, as specified. The bill would also prohibit a person, including an employee or individual contracted or subcontracted to provide health care services, a health care facility, or other entity from incurring civil or criminal liability as a result of making a ~~report if made in good faith.~~ *report.*

The Medical Practice Act establishes the Medical Board of California for the licensure, regulation, and discipline of physicians and surgeons.

The act authorizes the board to deny a physician's and surgeon's certificate to an applicant guilty of unprofessional conduct or of any cause that would subject a licensee to revocation or suspension of their license. The act authorizes the board in its sole discretion to issue a

probationary physician's and surgeon's certificate to an applicant subject to terms and conditions.

This bill would require the board to disclose a probationary physician's and surgeon's certificate and the operative statement of issues to an inquiring member of the public and to post the certificate and statement on the board's internet website for 10 years from issuance.

The act requires the board to take action against any licensee who is charged with unprofessional conduct and provides that unprofessional conduct includes the repeated failure by a certificate holder who is the subject of an investigation by the board, in the absence of good cause, to attend and participate in an interview by the board.

This bill would delete the condition that the failure to attend and participate in an interview by the board be repeated. The bill would also delete an obsolete provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 800 of the Business and Professions Code
2 is amended to read:
3 800. (a) The Medical Board of California, the Podiatric
4 Medical Board of California, the Board of Psychology, the Dental
5 Board of California, the Dental Hygiene Board of California, the
6 Osteopathic Medical Board of California, the State Board of
7 Chiropractic Examiners, the Board of Registered Nursing, the
8 Board of Vocational Nursing and Psychiatric Technicians of the
9 State of California, the State Board of Optometry, the Veterinary
10 Medical Board, the Board of Behavioral Sciences, the Physical
11 Therapy Board of California, the California State Board of
12 Pharmacy, the Speech-Language Pathology and Audiology and
13 Hearing Aid Dispensers Board, the California Board of
14 Occupational Therapy, the Acupuncture Board, and the Physician
15 Assistant Board shall each separately create and maintain a central
16 file of the names of all persons who hold a license, certificate, or
17 similar authority from that board. Each central file shall be created
18 and maintained to provide an individual historical record for each
19 licensee with respect to the following information:

1 (1) Any conviction of a crime in this or any other state that
2 constitutes unprofessional conduct pursuant to the reporting
3 requirements of Section 803.

4 (2) Any judgment or settlement requiring the licensee or the
5 licensee's insurer to pay any amount of damages in excess of three
6 thousand dollars (\$3,000) for any claim that injury or death was
7 proximately caused by the licensee's negligence, error or omission
8 in practice, or by rendering unauthorized professional services,
9 pursuant to the reporting requirements of Section 801 or 802.

10 (3) Any public complaints for which provision is made pursuant
11 to subdivision (b).

12 (4) Disciplinary information reported pursuant to Section 805,
13 including any additional exculpatory or explanatory statements
14 submitted by the licensee pursuant to subdivision (f) of Section
15 805. If a court finds, in a final judgment, that the peer review
16 resulting in the 805 report was conducted in bad faith and the
17 licensee who is the subject of the report notifies the board of that
18 finding, the board shall include that finding in the central file. For
19 purposes of this paragraph, "peer review" has the same meaning
20 as defined in Section 805.

21 (5) Information reported pursuant to Section 805.01, including
22 any explanatory or exculpatory information submitted by the
23 licensee pursuant to subdivision (b) of that section.

24 (b) (1) Each board shall prescribe and promulgate forms on
25 which members of the public and other licensees or certificate
26 holders may file written complaints to the board alleging any act
27 of misconduct in, or connected with, the performance of
28 professional services by the licensee.

29 (2) If a board, or division thereof, a committee, or a panel has
30 failed to act upon a complaint or report within five years, or has
31 found that the complaint or report is without merit, the central file
32 shall be purged of information relating to the complaint or report.

33 (3) Notwithstanding this subdivision, the Board of Psychology,
34 the Board of Behavioral Sciences, and the Respiratory Care Board
35 of California shall maintain complaints or reports as long as each
36 board deems necessary.

37 (c) (1) The contents of any central file that are not public
38 records under any other provision of law shall be confidential
39 except that the licensee involved, or the licensee's counsel or
40 representative, may inspect and have copies made of the licensee's

1 complete file except for the provision that may disclose the identity
2 of an information source. For the purposes of this section, a board
3 may protect an information source by providing a copy of the
4 material with only those deletions necessary to protect the identity
5 of the source or by providing a summary of the substance of the
6 material. Whichever method is used, the board shall ensure that
7 full disclosure is made to the subject of any personal information
8 that could reasonably in any way reflect or convey anything
9 detrimental, disparaging, or threatening to a licensee’s reputation,
10 rights, benefits, privileges, or qualifications, or be used by a board
11 to make a determination that would affect a licensee’s rights,
12 benefits, privileges, or qualifications. The information required to
13 be disclosed pursuant to Section 803.1 shall not be considered
14 among the contents of a central file for the purposes of this
15 subdivision.

16 (2) The licensee may, but is not required to, submit any
17 additional exculpatory or explanatory statement or other
18 information that the board shall include in the central file.

19 (3) Each board may permit any law enforcement or regulatory
20 agency when required for an investigation of unlawful activity or
21 for licensing, certification, or regulatory purposes to inspect and
22 have copies made of that licensee’s file, unless the disclosure is
23 otherwise prohibited by law.

24 (4) These disclosures shall effect no change in the confidential
25 status of these records.

26 SEC. 2. Section 805.8 is added to the Business and Professions
27 Code, to read:

28 805.8. (a) As used in this section, the following terms shall
29 have the following meanings:

30 (1) “Agency” means the relevant state licensing agency with
31 regulatory jurisdiction over a healing arts licensee listed in
32 paragraph (2).

33 (2) “Healing arts licensee” or “licensee” means a licensee
34 licensed under Division 2 (commencing with Section 500) or any
35 initiative act referred to in that division. “Healing arts licensee”
36 or “licensee” also includes a person authorized to practice medicine
37 pursuant to Sections 2064.5, 2113, and 2168.

38 (3) “Health care facility” means a clinic or health facility
39 licensed or exempt from licensure pursuant to Division 2
40 (commencing with Section 1200) of the Health and Safety Code.

1 (4) “Other entity” includes, but is not limited to, a postsecondary
2 educational institution as defined in Section 66261.5 of the
3 Education Code.

4 (5) “Sexual misconduct” means inappropriate contact or
5 communication of a sexual nature.

6 (b) A health care facility or other entity that makes any
7 arrangement under which a healing arts licensee is allowed to
8 practice or provide care for patients shall file a report of any
9 allegation of sexual abuse or sexual misconduct made against a
10 healing arts licensee by a patient, if the patient or the patient’s
11 representative makes the allegation in writing, to the agency within
12 15 days of receiving the written allegation of sexual abuse or sexual
13 misconduct. An arrangement under which a licensee is allowed to
14 practice or provide care for patients includes, but is not limited to,
15 full staff privileges, active staff privileges, limited staff privileges,
16 auxiliary staff privileges, provisional staff privileges, temporary
17 staff privileges, courtesy staff privileges, locum tenens
18 arrangements, and contractual arrangements to provide professional
19 services, including, but not limited to, arrangements to provide
20 outpatient services.

21 (c) The report provided pursuant to subdivision (b) shall be kept
22 confidential and shall not be subject to discovery, except that the
23 information may be reviewed as provided subdivision in (c) of
24 Section 800 and may be disclosed in any subsequent disciplinary
25 hearing conducted pursuant to the Administrative Procedure Act
26 (Chapter 5 (commencing with Section 11500) of Part 1 of Division
27 3 of Title 2 of the Government Code).

28 (d) A willful failure to file the report described in subdivision
29 (b) shall be punishable by a fine, not to exceed one hundred
30 thousand dollars (\$100,000) per violation, that shall be paid by the
31 health care facility or other entity subject to subdivision (b). The
32 fine may be imposed in any civil or administrative action or
33 proceeding brought by or on behalf of any agency having
34 regulatory jurisdiction over the licensee regarding whom the report
35 was or should have been filed. If the person who is designated or
36 otherwise required to file the report under this section is a licensed
37 physician and surgeon, the action or proceeding shall be brought
38 by the Medical Board of California. If the person who is designated
39 or otherwise required to file the report required under this section
40 is a licensed doctor of podiatric medicine, the action or proceeding

1 shall be brought by the Podiatric Medical Board of California. The
2 fine shall be paid to that agency, but not expended until
3 appropriated by the Legislature. A violation of this subdivision
4 may constitute unprofessional conduct by the licensee. A person
5 who is alleged to have violated this subdivision may assert any
6 defense available at law. As used in this subdivision, “willful”
7 means a voluntary and intentional violation of a known legal duty.

8 (e) Except as provided in subdivision (c), any failure to file the
9 report described in subdivision (b) shall be punishable by a fine,
10 not to exceed fifty thousand dollars (\$50,000) per violation, that
11 shall be paid by the health care facility or other entity subject to
12 subdivision (b). The fine may be imposed in any civil or
13 administrative action or proceeding brought by or on behalf of any
14 agency having regulatory jurisdiction over the person regarding
15 whom the report was or should have been filed. If the person who
16 is designated or otherwise required to file the report required under
17 this section is a licensed physician and surgeon, the action or
18 proceeding shall be brought by the Medical Board of California.
19 If the person who is designated or otherwise required to file the
20 report required under this section is a licensed doctor of podiatric
21 medicine, the action or proceeding shall be brought by the Podiatric
22 Medical Board of California. The fine shall be paid to that agency,
23 but not expended until appropriated by the Legislature. The amount
24 of the fine imposed, not exceeding fifty thousand dollars (\$50,000)
25 per violation, shall be proportional to the severity of the failure to
26 report and shall differ based upon written findings, including
27 whether the failure to file caused harm to a patient or created a
28 risk to patient safety; whether any person who is designated or
29 otherwise required by law to file the report required under this
30 section exercised due diligence despite the failure to file or whether
31 the person knew or should have known that a report required under
32 this section would not be filed; whether there has been a prior
33 failure to file a report required under this section; and whether a
34 report was filed with another state agency or law enforcement.
35 The amount of the fine imposed may also differ based on whether
36 a health care facility is a small or rural ~~hospital~~ *hospital*, as defined
37 in Section 124840 of the Health and Safety Code.

38 (f) A person, including an employee or individual contracted
39 or subcontracted to provide health care services, a health care
40 facility, or other entity shall not incur any civil or criminal liability

1 as a result of making a report required by this ~~section if made in~~
2 ~~good faith.~~ *section.*

3 (g) The agency shall investigate the circumstances underlying
4 a report received pursuant to this section.

5 SEC. 3. Section 2221 of the Business and Professions Code is
6 amended to read:

7 2221. (a) The board may deny a physician's and surgeon's
8 certificate to an applicant guilty of unprofessional conduct or of
9 any cause that would subject a licensee to revocation or suspension
10 of their license. The board, in its sole discretion, may issue a
11 probationary physician's and surgeon's certificate to an applicant
12 subject to terms and conditions, including, but not limited to, any
13 of the following conditions of probation:

14 (1) Practice limited to a supervised, structured environment
15 where the licensee's activities shall be supervised by another
16 physician and surgeon.

17 (2) Total or partial restrictions on drug prescribing privileges
18 for controlled substances.

19 (3) Continuing medical or psychiatric treatment.

20 (4) Ongoing participation in a specified rehabilitation program.

21 (5) Enrollment and successful completion of a clinical training
22 program.

23 (6) Abstention from the use of alcohol or drugs.

24 (7) Restrictions against engaging in certain types of medical
25 practice.

26 (8) Compliance with all provisions of this chapter.

27 (9) Payment of the cost of probation monitoring.

28 (b) The board may modify or terminate the terms and conditions
29 imposed on the probationary certificate upon receipt of a petition
30 from the licensee. The board may assign the petition to an
31 administrative law judge designated in Section 11371 of the
32 Government Code. After a hearing on the petition, the
33 administrative law judge shall provide a proposed decision to the
34 board.

35 (c) The board shall deny a physician's and surgeon's certificate
36 to an applicant who is required to register pursuant to Section 290
37 of the Penal Code. This subdivision does not apply to an applicant
38 who is required to register as a sex offender pursuant to Section
39 290 of the Penal Code solely because of a misdemeanor conviction
40 under Section 314 of the Penal Code.

1 (d) An applicant shall not be eligible to reapply for a physician's
2 and surgeon's certificate for a minimum of three years from the
3 effective date of the denial of their application, except that the
4 board, in its discretion and for good cause demonstrated, may
5 permit reapplication after not less than one year has elapsed from
6 the effective date of the denial.

7 (e) The board shall disclose a probationary physician's and
8 surgeon's certificate issued pursuant to this section and the
9 operative statement of issues to an inquiring member of the public
10 and shall post the certificate and statement on the board's internet
11 website for 10 years from issuance.

12 SEC. 4. Section 2234 of the Business and Professions Code is
13 amended to read:

14 2234. The board shall take action against any licensee who is
15 charged with unprofessional conduct. In addition to other
16 provisions of this article, unprofessional conduct includes, but is
17 not limited to, the following:

18 (a) Violating or attempting to violate, directly or indirectly,
19 assisting in or abetting the violation of, or conspiring to violate
20 any provision of this chapter.

21 (b) Gross negligence.

22 (c) Repeated negligent acts. To be repeated, there must be two
23 or more negligent acts or omissions. An initial negligent act or
24 omission followed by a separate and distinct departure from the
25 applicable standard of care shall constitute repeated negligent acts.

26 (1) An initial negligent diagnosis followed by an act or omission
27 medically appropriate for that negligent diagnosis of the patient
28 shall constitute a single negligent act.

29 (2) When the standard of care requires a change in the diagnosis,
30 act, or omission that constitutes the negligent act described in
31 paragraph (1), including, but not limited to, a reevaluation of the
32 diagnosis or a change in treatment, and the licensee's conduct
33 departs from the applicable standard of care, each departure
34 constitutes a separate and distinct breach of the standard of care.

35 (d) Incompetence.

36 (e) The commission of any act involving dishonesty or
37 corruption that is substantially related to the qualifications,
38 functions, or duties of a physician and surgeon.

39 (f) Any action or conduct that would have warranted the denial
40 of a certificate.

- 1 (g) The failure by a certificate holder, in the absence of good
- 2 cause, to attend and participate in an interview by the board. This
- 3 subdivision shall only apply to a certificate holder who is the
- 4 subject of an investigation by the board.

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