

LEGISLATIVE DIGEST

[Police Code - Expanding Protections - Fair Chance Ordinance]

Ordinance amending the Police Code to modify provisions of the Fair Chance Ordinance that regulate the use of criminal history in certain employment and housing decisions specifically by providing that employers and affordable housing providers may not use out-of-state criminal convictions or arrests for conduct that is lawful in California related to abortion-related healthcare, drag performances, gender-affirming care, and spontaneous abortion, as defined, in making certain employment or housing-related decisions; giving enforcement and rulemaking authority for the employment provisions to the Human Rights Commission in place of the Office of Labor Standards Enforcement; increasing administrative penalties for violations; and increasing liquidated damages available in a lawsuit.

Existing Law

Article 49 of the Police Code prohibits employers and housing providers from inquiring about or discussing an applicant's conviction history until after a conditional offer of employment or verification of housing eligibility has been completed. Once a conditional offer of employment or eligibility for housing has been made, employers and housing providers may obtain a copy of a background check report of the applicant. In making an employment or housing decision based on an applicant's conviction history, an employer or housing provider shall only consider Directly-Related Convictions, defined in the employment context as conduct for which a person was convicted that has a direct and specific negative bearing on that person's ability to perform the duties or responsibilities necessarily related to the employment position, or, defined in the housing context as conduct for which a person was convicted that has a direct and specific negative bearing on the safety of persons or property.

Section 4909 gives administrative enforcement authority over the employment provisions to the Office of Labor Standards Enforcement and Section 4911 gives administrative enforcement authority over the housing provisions to the Human Rights Commission. Both sections provide financial penalties for violations, a process to appeal administrative enforcement decisions, and civil enforcement provisions.

Amendments to Current Law

This ordinance would amend Article 49 of the Police Code to expand protected categories of conduct that cannot be considered by employers and housing providers in the Directly Related Conviction analysis and thus cannot form the basis for the denial of employment or housing. The amendments define four categories of conduct that are lawful in California but may form the basis of an out-of-state conviction. These protected categories are

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conduct related to an Abortion-Related Healthcare Conviction, a Drag Conviction, a Gender Affirming Care Conviction, and a Spontaneous Abortion-Related Conviction.

The ordinance makes clear that an out-of-state conviction for any of these protected categories of conduct must not be considered by an employer or housing providing in San Francisco as a Directly-Related Conviction for employment or housing purposes. This means that once an employer has made a conditional offer of employment or a housing provider has determined that a person is eligible for housing, they may obtain a copy of a criminal background check report; however, to the extent that background check report includes out-of-state convictions for any of the four protected categories of conduct, such convictions must not be considered in the Directly-Related Conviction analysis for purposes of denying employment or housing.

The ordinance clarifies timelines for employers, housing providers and applicants to submit evidence of a background check report's inaccuracy, and improves the process for fair reconsideration of applications when the applicant can make a reasonable factual showing that a proposed denial of employment or housing is based only on a conviction that is not "directly related." It increases financial penalties for violations, in turn providing higher remedies to impacted individuals. Finally, it consolidates administrative enforcement authority of the employment provisions with the Human Rights Commission in place of the Office of Labor Standards Enforcement.