

7014

2011-2012 Regular Sessions

I N A S S E M B L Y

April 8, 2011

Introduced by M. of A. AUBRY -- read once and referred to the Committee on Correction

AN ACT to amend the executive law and the criminal procedure law, in relation to preventing employment discrimination against persons whose criminal charges have been adjourned in contemplation of dismissal

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 16 of section 296 of the executive law, as
2 separately amended by section 3 of part N and section 14 of part AAA of
3 chapter 56 of the laws of 2009, is amended to read as follows:
4 16. It shall be an unlawful discriminatory practice, unless specif-
5 ically required or permitted by statute, for any person, agency, bureau,
6 corporation or association, including the state and any political subdivi-
7 sion thereof, to make any inquiry about, whether in any form of appli-
8 cation or otherwise, or to act upon adversely to the individual
9 involved, any arrest or criminal accusation of such individual not then
10 pending against that individual which was followed by a termination of
11 that criminal action or proceeding in favor of such individual, as
12 defined in subdivision two of section 160.50 of the criminal procedure
13 law, OR BY AN ORDER ADJOURNING THE CRIMINAL ACTION IN CONTEMPLATION OF
14 DISMISSAL, PURSUANT TO SECTIONS 170.55 OR 170.56 OF THE CRIMINAL PROCE-
15 DURE LAW, or by a youthful offender adjudication, as defined in subdivi-
16 sion one of section 720.35 of the criminal procedure law, or by a
17 conviction for a violation sealed pursuant to section 160.55 of the
18 criminal procedure law or by a conviction which is sealed pursuant to
19 section 160.58 of the criminal procedure law, in connection with the
20 licensing, employment or providing of credit or insurance to such indi-
21 vidual; provided, further, that no person shall be required to divulge
22 information pertaining to any arrest or criminal accusation of such
23 individual not then pending against that individual which was followed
24 by a termination of that criminal action or proceeding in favor of such

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 individual, as defined in subdivision two of section 160.50 of the crim-
2 inal procedure law, OR BY AN ORDER ADJOURNING THE CRIMINAL ACTION IN
3 CONTEMPLATION OF DISMISSAL, PURSUANT TO SECTIONS 170.55 OR 170.56 OF THE
4 CRIMINAL PROCEDURE LAW, or by a youthful offender adjudication, as
5 defined in subdivision one of section 720.35 of the criminal procedure
6 law, or by a conviction for a violation sealed pursuant to section
7 160.55 of the criminal procedure law, or by a conviction which is sealed
8 pursuant to section 160.58 of the criminal procedure law. The provisions
9 of this subdivision shall not apply to the licensing activities of
10 governmental bodies in relation to the regulation of guns, firearms and
11 other deadly weapons or in relation to an application for employment as
12 a police officer or peace officer as those terms are defined in subdivi-
13 sions thirty-three and thirty-four of section 1.20 of the criminal
14 procedure law; provided further that the provisions of this subdivision
15 shall not apply to an application for employment or membership in any
16 law enforcement agency with respect to any arrest or criminal accusation
17 which was followed by a youthful offender adjudication, as defined in
18 subdivision one of section 720.35 of the criminal procedure law, or by a
19 conviction for a violation sealed pursuant to section 160.55 of the
20 criminal procedure law, or by a conviction which is sealed pursuant to
21 section 160.58 of the criminal procedure law. FOR PURPOSES OF THIS
22 SUBDIVISION, AN ACTION WHICH HAS BEEN ADJOURNED IN CONTEMPLATION OF
23 DISMISSAL, PURSUANT TO SECTIONS 170.55 OR 170.56 OF THE CRIMINAL PROCE-
24 DURE LAW, SHALL NOT BE CONSIDERED A PENDING ACTION, UNLESS THE CASE HAS
25 BEEN RESTORED TO THE CALENDAR.

26 S 2. Subdivision 8 of section 170.55 of the criminal procedure law, as
27 added by chapter 134 of the laws of 1982 and as renumbered by chapter
28 683 of the laws of 1990, is amended to read as follows:

29 8. The granting of an adjournment in contemplation of dismissal shall
30 not be deemed to be a conviction or an admission of guilt. No person
31 shall suffer any disability or forfeiture as a result of such an order.
32 UPON GRANTING THE ORDER OF ADJOURNMENT, THE ACTION SHALL BE CONSIDERED
33 TERMINATED IN THE DEFENDANT'S FAVOR FOR THE PURPOSE OF OCCUPATIONAL
34 LICENSING AS DEFINED BY SUBDIVISION FOUR OF SECTION SEVEN HUNDRED FIFTY
35 OF THE CORRECTION LAW. Upon the dismissal of the accusatory instrument
36 pursuant to this section, the arrest and prosecution shall be deemed a
37 nullity and the defendant shall be restored, in contemplation of law, to
38 the status he OR SHE occupied before his OR HER arrest and prosecution.

39 S 3. Subdivision 4 of section 170.56 of the criminal procedure law, as
40 added by chapter 1042 of the laws of 1971, is amended to read as
41 follows:

42 4. UPON THE GRANTING OF AN ORDER PURSUANT TO SUBDIVISION TWO OF THIS
43 SECTION, THE ACTION SHALL BE CONSIDERED TERMINATED IN THE DEFENDANT'S
44 FAVOR FOR THE PURPOSE OF OCCUPATIONAL LICENSING AS DEFINED BY SUBDIVI-
45 SION FOUR OF SECTION SEVEN HUNDRED FIFTY OF THE CORRECTION LAW. Upon the
46 granting of an order pursuant to subdivision three, the arrest and pros-
47 ecution shall be deemed a nullity and the defendant shall be restored,
48 in contemplation of law, to the status he OR SHE occupied before his OR
49 HER arrest and prosecution.

50 S 4. This act shall take effect on the ninetieth day after it shall
51 have become a law.