

7014

2011-2012 Regular Sessions

I N   A S S E M B L Y

April 8, 2011

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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 ASSEM-  
BLY, 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.