STATE OF NEW YORK

4038--A

2017-2018 Regular Sessions

IN ASSEMBLY

January 31, 2017

Introduced by M. of A. WEPRIN, O'DONNELL, AUBRY, PERRY, ABINANTI -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Subdivision 16 of section 296 of the executive law, as separately amended by section 3 of part N and section 14 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, **or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10 of the criminal procedure law,** or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of

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

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such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, **or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55 or 170.56 of the criminal procedure law,** or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 of the criminal procedure law. **For purposes of this subdivision, an action which has been adjourned in contemplation of dismissal, pursuant to section 170.55 or 170.56 of the criminal procedure law, shall not be considered a pending action, unless the case has been restored to the calendar.**

§ 2. Subdivision 16 of section 296 of the executive law, as amended by section 48-a of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, **or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10 of the criminal procedure law,** or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.59 or 160.58 of the criminal procedure law, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, **or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55 or 170.56 of the criminal procedure law,** or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the

criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law. **For purposes of this subdivision, an action which has been adjourned in contemplation of dismissal, pursuant to section 170.55 or 170.56 of the criminal procedure law, shall not be considered a pending action, unless the case has been restored to the calendar.**

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

8. The granting of an adjournment in contemplation of dismissal shall not be deemed to be a conviction or an admission of guilt. No person shall suffer any disability or forfeiture as a result of such an order. **Upon granting the order of adjournment, the action shall be considered terminated in the defendant's favor for the purpose of employment as defined by subdivision five of section seven hundred fifty of the correction law or license as defined by subdivision four of section seven hundred fifty of the correction law.** Upon the dismissal of the accusatory instrument pursuant to this section, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he **or she** occupied before his **or her** arrest and prosecution.

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

4. **Upon the granting of an order pursuant to subdivision two of this section, the action shall be considered terminated in the defendant's favor for the purpose of employment as defined by subdivision five of section seven hundred fifty of the correction law or a license as defined by subdivision four of section seven hundred fifty of the correction law.** Upon the granting of an order pursuant to subdivision three, the arrest and prosecution shall be deemed a nullity and the defendant shall be restored, in contemplation of law, to the status he **or she** occupied before his **or her** arrest and prosecution.

§ 5. No provision of this act shall be construed to impair or diminish any rights an employee or licensee, or an applicant for employment or a license, may already possess pursuant to section 170.55 or 170.56 of the criminal procedure law.

§ 6. This act shall take effect on the ninetieth day after it shall have become a law; provided however that section two of this act shall take effect on the same date and in the same manner as section 48-a of part WWW of chapter 59 of the laws of 2017, takes effect.