

STATE OF NEW YORK

3995

2019-2020 Regular Sessions

IN SENATE

February 22, 2019

Introduced by Sens. SERRANO, COMRIE, HOYLMAN, KRUEGER, RIVERA, SEPULVEDA
-- read twice and ordered printed, and when printed to be committed to
the Committee on Investigations and Government Operations

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 amended by section 48-a of part WWW of chapter 59 of the laws of 2017,
3 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 subdi-
7 vision 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 section 170.55, 170.56, 210.46, 210.47, or 215.10
15 of the criminal procedure law, or by a youthful offender adjudication,
16 as defined in subdivision one of section 720.35 of the criminal proce-
17 dure law, or by a conviction for a violation sealed pursuant to section
18 160.55 of the criminal procedure law or by a conviction which is sealed
19 pursuant to section 160.59 or 160.58 of the criminal procedure law, in
20 connection with the licensing, employment or providing of credit or
21 insurance to such individual; provided, further, that no person shall be
22 required to divulge information pertaining to any arrest or criminal
23 accusation of such individual not then pending against that individual

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

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1 which was followed by a termination of that criminal action or proceed-
2 ing in favor of such individual, as defined in subdivision two of
3 section 160.50 of the criminal procedure law, or by an order adjourning
4 the criminal action in contemplation of dismissal, pursuant to section
5 170.55, 170.56, 210.46, 210.47 or 215.10 of the criminal procedure law,
6 or by a youthful offender adjudication, as defined in subdivision one of
7 section 720.35 of the criminal procedure law, or by a conviction for a
8 violation sealed pursuant to section 160.55 of the criminal procedure
9 law, or by a conviction which is sealed pursuant to section 160.58 or
10 160.59 of the criminal procedure law. The provisions of this subdivision
11 shall not apply to the licensing activities of governmental bodies in
12 relation to the regulation of guns, firearms and other deadly weapons or
13 in relation to an application for employment as a police officer or
14 peace officer as those terms are defined in subdivisions thirty-three
15 and thirty-four of section 1.20 of the criminal procedure law; provided
16 further that the provisions of this subdivision shall not apply to an
17 application for employment or membership in any law enforcement agency
18 with respect to any arrest or criminal accusation which was followed by
19 a youthful offender adjudication, as defined in subdivision one of
20 section 720.35 of the criminal procedure law, or by a conviction for a
21 violation sealed pursuant to section 160.55 of the criminal procedure
22 law, or by a conviction which is sealed pursuant to section 160.58 or
23 160.59 of the criminal procedure law. For purposes of this subdivision,
24 an action which has been adjourned in contemplation of dismissal, pursu-
25 ant to section 170.55, 170.56, 210.46, 210.47 or 215.10 of the criminal
26 procedure law, shall not be considered a pending action, unless the
27 order to adjourn in contemplation of dismissal is revoked and the case
28 is restored to the calendar for further prosecution.

29 § 2. Subdivision 8 of section 170.55 of the criminal procedure law, as
30 added by chapter 134 of the laws of 1982 and as renumbered by chapter
31 683 of the laws of 1990, is amended to read as follows:

32 8. The granting of an adjournment in contemplation of dismissal shall
33 not be deemed to be a conviction or an admission of guilt. No person
34 shall suffer any disability or forfeiture as a result of such an order.
35 Upon granting the order of adjournment, the action shall be considered
36 terminated in the defendant's favor for the purpose of the provisions of
37 subdivision sixteen of section two hundred ninety-six of the executive
38 law. Upon the dismissal of the accusatory instrument pursuant to this
39 section, the arrest and prosecution shall be deemed a nullity and the
40 defendant shall be restored, in contemplation of law, to the status he
41 or she occupied before his or her arrest and prosecution.

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

45 4. Upon the granting of an order pursuant to subdivision two of this
46 section, the action shall be considered terminated in the defendant's
47 favor for the purpose of the provisions of subdivision sixteen of
48 section two hundred ninety-six of the executive law. Upon the granting
49 of an order pursuant to subdivision three, the arrest and prosecution
50 shall be deemed a nullity and the defendant shall be restored, in
51 contemplation of law, to the status he or she occupied before his or her
52 arrest and prosecution.

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

1 § 5. This act shall take effect on the ninetieth day after it shall
2 have become a law. Effective immediately, the addition, amendment and/or
3 repeal of any rule or regulation necessary for the implementation of
4 this act on its effective date are authorized to be made on or before
5 such date.