

June 23, 2017

The Honorable Steven Bradford
Chairman, Senate Labor and Industrial Relations Committee
1020 N Street, Room 545
Sacramento, CA 95814

Dear Chairman Bradford,

On behalf of the National Association of Professional Background Screeners (NAPBS), whose members include California residents and businesses, we write to you in opposition to California Assembly Bill 1008, recently passed by the Assembly.

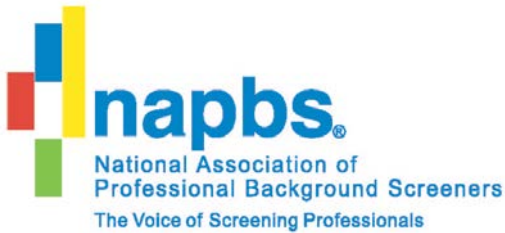
As a nonprofit organization consisting of over 800 small and large companies engaged in the background screening profession, NAPBS has been dedicated to providing the public with safe places to live and work since 2003. NAPBS member companies range from Fortune 100 companies to small, local businesses, and conduct millions of employment-related background checks each year. Its members help employers, staffing agencies and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors and volunteers. This bill as drafted poses a risk to employers who might not be able to effectively screen job applicants.

Timing of Criminal History Inquiry

While we support the intent to provide those with criminal histories a fair chance at employment by removing questions about prior convictions from the initial employment application, we do not believe that an employer should be required to provide a conditional offer of employment before they may inquire about the applicant's criminal history. This requirement is likely to slow the hiring process, by starting the background check later in the process and getting results later, thereby delaying the start date. It also can force an employer to conduct background checks on applicants one-by-one (after the conditional) offer, rather than permitting the employer to conduct checks on multiple qualified applicants at the same time, and then selecting the best applicant for the job. Similar "ban-the-box" laws in other states permit inquiries into applicant's criminal histories following an initial interview.

Prohibiting Consideration of Certain Criminal Histories

AB 1008 includes several items that an employer may not consider when conducting a criminal background check. Among the items are: Misdemeanor convictions for which no jail sentence can be imposed, or infractions; and Misdemeanor convictions for which three years have passed since the date of conviction or felony convictions for which seven years have passed since the date of conviction.



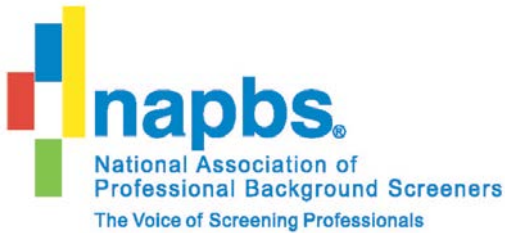
Limiting the time period in this manner can cause serious crimes in a person's history to be omitted from consideration during the employment process and would conflict with federal and state law governing this area. If passed as written the bill may result in individuals with a history of violent crimes entering the workplace in a capacity that may be inappropriate or even dangerous to others. For example, it has been discovered that an employee who is the suspect in a recent workplace mass shooting in Kansas had an extensive criminal history with most of his crimes dating back to the late 1990s. These crimes included previous violent activity; however, under this bill, an employer would not be permitted to review such criminal history.

We would also note that the Fair Credit Reporting Act (FCRA), which is the primary law that applies to background screening, allows background screening professionals to provide felony and misdemeanor conviction information regardless of timeframe. We believe that the FCRA requirements set an appropriate balance between the ability for a consumer to have a fresh start and the important safety and security considerations of employers. Accordingly, NAPBS would respectfully propose to eliminate these "look back" provisions.

These prohibitions also go beyond existing state law. Under the California Investigative Consumer Reporting Agencies Act, employers are already barred from considering criminal history after seven years. The seven year period is timed to the disposition of the case, from whichever date is later – conviction, release or parole. Additionally, the recently issued "Consideration of Criminal History in Employment Decisions" Regulations by the California Fair Employment & Housing Council also conflict with AB 1008's prohibitions. Employers hiring in California face an increasingly complex and now conflicting web of laws and regulations which make compliance impossible. If it is the intent of this bill to regulate what can or cannot be considered in a hiring decision, it should either reflect the current status of the law in California or preempt any existing laws or regulations on the topic at a local/municipality and state level.

Individualized Assessment Requirement

AB 1008 would also add a provision to the State's "ban-the-box" statute that would codify guidance issued by the U.S. Equal Employment Opportunity Commission (EEOC) concerning the use of arrest or conviction records in employment decisions. The EEOC Guidance is intended to provide clarity on an employer's use of an individual's criminal history in making employment decisions as, in certain instances, such consideration may be deemed a violation of the prohibition against employment discrimination under Title VII of the Civil Rights Act of 1964. Despite its intended purpose, the Guidance itself is vague (arguably purposefully so since it is guidance and not legislative text). The vague nature can make it difficult for employers to understand exactly what is being recommended as a best practice. Indeed, U.S. Congressman Tim Walberg, a senior member of the U.S. Committee on Education and the Workforce and Chairman of the Subcommittee on Workforce Protections has sponsored legislation (H.R. 1646)



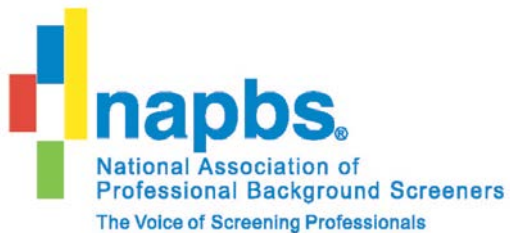
that would amend the Civil Rights Act itself to provide greater clarity on when and how an employer may use an applicant's criminal history information to provide a basis for employment decisions. This legislation provides employers with a safe harbor from liability under Title VII of the 1964 Civil Rights Act if they follow other federal or state laws mandating criminal background checks in hiring for certain jobs.

NAPBS fully supports the intent of AB 1008 to provide protections against employment discrimination; however, relying on the vague guidance issued by the EEOC may create more problems for employers who rely on or are required under law to consider criminal history information when making employment decisions.

Conflict with Existing California Law

As noted previously, there are provisions that conflict with or add additional requirements to existing California law. In addition to prohibiting from consideration certain conviction information, the bill provides steps an employer must take if considering taking adverse action based on an applicant's criminal history. The recently passed "Consideration of Criminal History in Employment Decisions" Regulations by the California Fair Employment & Housing Council also imposed adverse action requirements that do not mirror this bill's language. Given how complicated of a process this is already for employers, we request that either this language be stricken from AB 1008 or the adverse action language outlined in AB 1008 preempt the Regulations. Employers need one consistent, coherent standard to comply with so they can balance on the importance of giving those with criminal histories a second chance with running their businesses successfully.

Additionally, we would recommend the Committee consider language that would pre-empt any similar local ordinances. Municipal governments, in Los Angeles and San Francisco in particular, have adopted ordinances that conflict with State laws and the recently adopted regulations. For employers that may operate in multiple places of business throughout the state, complying with a patchwork of varying local laws is already burdensome, time-consuming, and costly. Instead, a single, state-wide standard would ease the compliance burden and ensure a greater success of the intended outcome of helping those with criminal pasts re-enter the workforce.



We hope that you will take these points into consideration and consider amending the bill before your committee. NAPBS and its members are prepared to discuss any questions you may have and looks forward to working with you to improve this legislation as it moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Sorenson", written in a cursive style.

Melissa Sorenson
Executive Director

cc: The Honorable Kevin Michael McCarty