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AB-2845 Criminal procedure: pardons. (2017-2018)

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Assembly Bill No. 2845

CHAPTER 824

An act to amend Section 12952 of the Government Code, and to amend Sections 4812, 4852.06, 4852.16, and 4852.18 of, and to add Section 4802.5 to, the Penal Code, relating to pardons.

[Approved by Governor September 27, 2018. Filed with Secretary of State September 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2845, Bonta. Criminal procedure: pardons.

The general authority to grant reprieves, pardons, and commutations of sentence is conferred upon the Governor by Section 8 of Article V of the Constitution of the State of California. Existing law establishes the procedure for application for a pardon. Existing law authorizes the Board of Parole Hearings to recommend to the Governor persons imprisoned in the state prison system who, in their judgment, ought to be pardoned.

Existing law also authorizes a person formerly convicted of a crime to file a petition with the superior court for a certificate of rehabilitation. Existing law authorizes the court to review that application and issue a certificate of rehabilitation, as specified. Existing law requires any certificate of rehabilitation issued by the court to be forwarded to the Governor for consideration of a full pardon.

Existing law also authorizes a person twice convicted of a felony to apply directly to the governor for a pardon. Existing law defines the effect of a full pardon.

Existing law, upon request of the Governor, requires the Board of Parole Hearings to investigate and report on all applications for reprieves, pardons, and commutation of sentence and to make recommendations to the Governor.

This bill would authorize the board to make recommendations to the Governor at any time, and would authorize the Governor to request investigation into candidates for pardon or commutation at any time. The bill would require the board to consider expedited review of the application if a petitioner indicates an urgent need for the pardon or commutation, as specified. The bill would also require the board to provide notification to an applicant after the board receives the application, and when the board has issued a recommendation.

The bill would, subject to criteria established by the Governor, as specified, require a certificate of rehabilitation issued by a court to be reviewed by the board within one year of receipt of the certificate, and would require the board to issue a recommendation as to whether the Governor should pardon that individual.

The bill would make a certificate of rehabilitation available to a person who has had a conviction dismissed pursuant to withdrawal of plea, as specified.

This bill would also require the Governor to make the application for a pardon and the application for a commutation available on the Governor's Internet Web site and would require the courts of each county to make the application for a certificate of rehabilitation available on the court's Internet Web site and at each courthouse.

The bill would make other conforming changes.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known, and may be cited, as the Pardon and Commutation Reform Act of 2018.

SEC. 2. Section 12952 of the Government Code is amended to read:

12952. (a) Except as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following:

(1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.

(2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant.

(3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment:

(A) Arrest not followed by conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the Labor Code.

(B) Referral to or participation in a pretrial or posttrial diversion program.

(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation.

(4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to prevent an employer from conducting a conviction history background check not in conflict with the provisions of subdivision (a).

(c) (1) (A) An employer that intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment described in this paragraph, the employer shall consider all of the following:

(i) The nature and gravity of the offense or conduct.

(ii) The time that has passed since the offense or conduct and completion of the sentence.

(iii) The nature of the job held or sought.

(B) An employer may, but is not required to, commit the results of this individualized assessment to writing.

(2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification may, but is not required to, justify or explain the employer's reasoning for making the preliminary decision. The notification shall contain all of the following:

(A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer.

(B) A copy of the conviction history report, if any.

(C) An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.

(3) The applicant shall have at least five business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. If, within the five business days, the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report that was the basis for the preliminary decision to rescind the offer and that the applicant is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.

(4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision.

(5) If an employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer shall notify the applicant in writing of all the following:

(A) The final denial or disqualification. The employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.

(B) Any existing procedure the employer has for the applicant to challenge the decision or request reconsideration.

(C) The right to file a complaint with the department.

(d) This section does not apply in any of the following circumstances:

(1) To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.

(2) To a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.

(3) To a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code.

(4) To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. For purposes of this paragraph, federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203), pursuant to the authority in Section 19(b) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203).

(e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.

(f) For purposes of this section:

(1) "Conviction" has the same meaning as defined in paragraphs (1) and (3) of subdivision (a) of Section 432.7 of the Labor Code.

(2) Notwithstanding paragraph (1), the term "conviction history" includes:

(A) An arrest not resulting in conviction only in the specific, limited circumstances described in subdivision (f) of Section 432.7 of the Labor Code, when an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, may ask an applicant for certain positions about specified types of arrests.

(B) An arrest for which an individual is out on bail or his or her own recognizance pending trial.

SEC. 3. Section 4802.5 is added to the Penal Code, to read:

4802.5. The Governor shall make the application for a pardon and the application for a commutation available on the Governor's Office Internet Web site and all applications for a direct pardon received by the Governor shall be promptly forwarded to the Board of Parole Hearings for an investigation and recommendation to the Governor. Applications supported by a certificate of rehabilitation may be granted by the Governor without investigation and recommendation by the Board of Parole Hearings in accordance with Section 4852.16.

SEC. 4. Section 4812 of the Penal Code is amended to read:

4812. (a) Upon request of the Governor, the Board of Parole Hearings shall investigate and report on all applications for reprieves, pardons, and commutations of sentence and shall make such recommendations to the Governor with reference thereto as it may seem advisable. To that end, the board shall examine and consider all applications so referred and all transcripts of judicial proceedings and all affidavits or other documents submitted in connection therewith, and shall have power to employ assistants and take testimony and to examine witnesses under oath and to do any and all things necessary to make a full and

complete investigation of and concerning all applications referred to it. Members of the board and its administrative officer are, and each of them is, hereby authorized to administer oaths.

(b) The board may make recommendations to the Governor at any time regarding applications for pardon or commutation, and the Governor may request investigation into candidates for pardon or commutation at any time.

(c) If a petitioner indicates in the application an urgent need for the pardon or commutation, including, but not limited to, a pending deportation order or deportation proceeding, then the board shall consider expedited review of the application.

(d) The board shall provide electronic or written notification to an applicant after the board receives the application, and when the board has issued a recommendation on the application. Nothing in this section requires the board to notify the applicant as to the reasons for the board's recommendation, which shall remain confidential.

(e) An applicant is eligible for a pardon, commutation, or certificate of rehabilitation without regard to his or her immigration status.

SEC. 5. Section 4852.06 of the Penal Code is amended to read:

4852.06. After the expiration of the minimum period of rehabilitation a person who has complied with the requirements of Section 4852.05 may file in the superior court of the county in which he or she then resides or in which he or she was convicted of a felony or of a crime the accusatory pleading of which was dismissed pursuant to Section 1203.4, a petition for ascertainment and declaration of the fact of his or her rehabilitation and of matters incident thereto, and for a certificate of rehabilitation under this chapter. A petition shall not be filed until and unless the petitioner has continuously resided in this state, after leaving prison or jail, for a period of not less than five years immediately preceding the date of filing the petition.

SEC. 6. Section 4852.16 of the Penal Code is amended to read:

4852.16. (a) The certified copy of a certificate of rehabilitation transmitted to the Governor shall constitute an application for a full pardon upon receipt of which the Governor may, without any further investigation, issue a pardon to the person named therein, except that, pursuant to Section 8 of Article V of the Constitution, the Governor shall not grant a pardon to any person twice convicted of felony, except upon the written recommendation of a majority of the judges of the Supreme Court.

(b) Subject to criteria established by the Governor, a certificate of rehabilitation issued by a court shall be reviewed by the Board of Parole Hearings within one year of receipt of the certificate, which shall issue a recommendation as to whether the Governor should pardon that individual. Any criteria established by the Governor shall be made publicly available, but shall be otherwise exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 7. Section 4852.18 of the Penal Code is amended to read:

4852.18. The Board of Parole Hearings shall furnish to the clerk of the superior court of each county a set of sample forms for a petition for certificate of rehabilitation and pardon, a notice of filing of petition for certificate of rehabilitation and pardon, and a certificate of rehabilitation. The clerk of the court shall have a sufficient number of these forms printed to meet the needs of the people of the county, shall post these forms on the court's Internet Web site, and shall make these forms available at no charge to persons requesting them.