

RESOLUTION 01-01-2023

DIGEST

Business and Professions Code: Background Check for Certain Volunteers

Amends Business and Professions Code section 18975 to allow volunteers employed by a government entity, active duty military or National Guard who already underwent a criminal background check pursuant to section 11105.3 of the Penal Code to not have to take the background check again.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

History:

No similar resolutions found.

Reasons:

This resolution amends Business and Professions Code section 18975 to allow volunteers employed by a government entity, active duty military or National Guard who already underwent a criminal background check pursuant to section 11105.3 of the Penal Code to not have to take the background check again. This resolution should be disapproved as it does not adequately protect the youth served by volunteer organizations.

The existing law took effect on January 1, 2022, and an amendment added as emergency legislation during September 2022, (subsection (b)(2)), “until January 1, 2024, paragraph (1) shall not apply to a youth service organization that, prior to January 1, 2022, did not require administrators, employees, or regular volunteers to undergo background checks.” Extended the time period for volunteer organizations to comply with the new law. The goal of 18975 is to help exclude volunteers with a history of child abuse. According to section 11105.3 of the Penal Code it is the agency or employer that does the background check and the reason is to protect against and prevent child abuse by volunteers.

The proposed resolution would create a carve out for who needs to obtain a background check. In particular, public sector volunteers, active duty military, and national guard would not have to take another background check to comply with Business and Professions Code section 18975 if they already conducted a background check as part of their employment, current position, or security clearance.

This resolution should be disapproved as it does not actually make the youth safer and has no limit as to when the background check occurred. For example, the proposed amendment does not state how often government employees or current active service people are screened, and/or current, if at all, the background check must be in order to excuse further compliance. The background check applies to “regular volunteers,” defined as being 18 years of age or older, having direct contact with or supervision of children, for more than 16 hours per month or 32 hours per year. It is unclear how many are actually impacted by the amendment or are being excluded by the amendment verses the protection needed and offered to youths by having the background checks. Finally, there does not appear to be any evidence that the \$70 fee for a

background check is a deterrent to volunteers from the military, government employment, or national guard.

There are no similar or pending bills at this time. The current language of Business and Professions code was enacted in 2021 with an emergency amendment in 2022.

This resolution should be disapproved.

RESOLUTION 01-01-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Business and Professions Code section 18975, to read as follows:

1 § 18975

2 (a) An administrator, employee, or regular volunteer of a youth service organization shall
3 complete training in child abuse and neglect identification and training in child abuse and neglect
4 reporting. The training requirement may be met by completing the online mandated reporter
5 training provided by the Office of Child Abuse Prevention in the State Department of Social
6 Services.

7 (b) (1) An administrator, employee, or regular volunteer of a youth service organization
8 shall undergo a background check pursuant to Section 11105.3 of the Penal Code to identify and
9 exclude any persons with a history of child abuse.

10 (2) Until January 1, 2024, paragraph (1) shall not apply to a youth service organization
11 that, prior to January 1, 2022, did not require administrators, employees, or regular volunteers to
12 undergo background checks pursuant to Section 11105.3 of the Penal Code.

13 (3) The requirements of subdivision (b)(1) shall not apply to volunteers who are currently
14 employed by a governmental entity, who are currently serving as active duty military, or who are
15 serving in the California National Guard, and who had a criminal background check as a
16 condition of their employment, current position, or security clearance.

17 (c) A youth service organization shall develop and implement child abuse prevention
18 policies and procedures, including, but not limited to, both of the following:

19 (1) Policies to ensure reporting of suspected incidents of child abuse to persons or entities
20 outside of the organization, including the reporting required pursuant to Section 11165.9 of the
21 Penal Code.

22 (2) (A) Policies requiring, to the greatest extent possible, the presence of at least two
23 mandated reporters whenever administrators, employees, or volunteers are in contact with, or
24 supervising, children.

25 (B) This paragraph shall not apply to an organization that provides one-to-one mentoring
26 to youth that has adopted and implemented the policies described in paragraph (1) and has
27 adopted and implemented policies to ensure comprehensive screening of volunteers, training of
28 volunteers and parents or guardians, and regular contact with volunteers and parents or
29 guardians.

30 (d) Before writing liability insurance for a youth service organization in this state, an
31 insurer may request information demonstrating compliance with this section from the youth
32 service organization as a part of the insurer’s loss control program.

33 (e) For purposes of this section:

34 (1) “Regular volunteer” means a volunteer with the youth service organization who is 18
35 years of age or older and who has direct contact with, or supervision of, children for more than
36 16 hours per month or 32 hours per year.

37 (2) “Youth service organization” means an organization that employs or utilizes the
38 services of persons who, due to their relationship with the organization, are mandated reporters
39 pursuant to paragraph (7) of subdivision (a) of Section 11165.7 of the Penal Code

(Proposed new language underlined; language to be deleted stricken)

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STATEMENT OF REASONS

The Problem: In 2021, Business and Professions Code section 18975 was added to require youth service organizations, like the Boy Scouts and Girl Scouts, obtain criminal background checks on administrators, employees and regular volunteers, in addition to developing and implementing child abuse prevention policies. However, there have been several unintended consequences from the addition of this section.

Recognizing the unanticipated impact that the background check requirement was having on youth service organizations, the Legislature acted in 2022 to adopt urgency legislation to provide an extended deadline for compliance. That action only deferred a portion of the unintended consequences of the adoption of section 18975.

One of the critical unintended consequences of the background check requirement is that public sector volunteers and active military personnel who often volunteer and team up with youth service organizations, and who have already had background checks as a condition of their employment, position, or security clearance must now pay around \$70 to have yet another background check performed. This is an unnecessary requirement because it does not improve public safety for the youth served by youth service organizations and adversely impacts those who have already completed background checks as a condition of their employment or position and who would otherwise be willing to serve as volunteers. In addition, certain active duty military and federal employees, whose identities need to be protected, are being instructed that they may not submit to this separate fingerprinting and background check. This is impacting ongoing relationships between youth service organizations and governmental organizations, like the U.S. Navy Seals.

The Solution: This resolution amends Business and Professions Code sections 18975, to exempt from the background check requirements, those governmental employees, active-duty military,

and California National Guard service members who, as a condition of their employment, position or security clearance, have had a criminal background check.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

Business and Professions Code section 18975, was added by Stats. 2021, ch. 169, section 1 (2021-2022 Reg. Sess.) (Assem. Bill No. 506), and amended by Stats. 2022, ch. 261, section 1 (2021-2022 Reg. Sess.) (Assem. Bill No. 2669).

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