



House of Representatives

General Assembly

File No. 503

February Session, 2006

Substitute House Bill No. 5781

House of Representatives, April 12, 2006

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CERTIFICATES OF EMPLOYABILITY AND REHABILITATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2006*) For the purposes of
2 sections 1 to 5, inclusive, of this act:

3 (1) "Barrier" means a denial of employment or a license based on an
4 eligible offender's conviction of a crime without due consideration of
5 whether the nature of the crime bears a direct relationship to such
6 employment or license;

7 (2) "Certificate of employability" means a document issued to an
8 eligible offender by the Board of Pardons and Paroles pursuant to
9 section 2 of this act;

10 (3) "Eligible offender" means a person who has been convicted of a
11 crime or crimes in this state or another jurisdiction and who is a
12 resident of this state;

13 (4) "Employment" means any remunerative work, occupation or
14 vocation or any form of vocational training, but does not include
15 employment with a law enforcement agency;

16 (5) "Forfeiture" means a disqualification or ineligibility for
17 employment or a license by reason of law based on an eligible
18 offender's conviction of a crime; and

19 (6) "License" means any license, permit, certificate or registration
20 that is required to be issued by the state or any of its agencies to
21 pursue, practice or engage in an occupation, trade, vocation, profession
22 or business.

23 Sec. 2. (NEW) (*Effective October 1, 2006*) (a) The Board of Pardons
24 and Paroles may issue a certificate of employability to relieve an
25 eligible offender of barriers or forfeitures by reason of such person's
26 conviction of the crime or crimes specified in such certificate. Such
27 certificate may be limited to one or more enumerated barriers or
28 forfeitures or may relieve the eligible offender of all barriers and
29 forfeitures. No certificate shall apply or be construed to apply to the
30 right of such person to retain or be eligible for public office.

31 (b) The Board of Pardons and Paroles may, in its discretion, issue a
32 certificate of employability to an eligible offender upon verified
33 application of such person.

34 (c) The board shall not issue a certificate of employability unless the
35 board is satisfied that:

36 (1) The person to whom the certificate is to be issued is an eligible
37 offender;

38 (2) The relief to be granted by the certificate may promote the public
39 policy of rehabilitation of ex-offenders through employment; and

40 (3) The relief to be granted by the certificate is consistent with the
41 public interest in public safety and the protection of property.

42 (d) In accordance with the provisions of subsection (c) of this
43 section, the board may limit the applicability of the certificate of
44 employability to specified types of employment or licenses for which
45 the eligible offender is otherwise qualified.

46 (e) The board may, for the purpose of determining whether such
47 certificate should be issued, request its staff to conduct an investigation
48 of the applicant and submit to the board a report of the investigation.
49 Any written report submitted to the board pursuant to this subsection
50 shall be confidential and not disclosed except where required or
51 permitted by any provision of the general statutes or upon specific
52 authorization of the board. The board may make such report available
53 for examination by the applicant or the applicant's attorney and afford
54 the applicant or the applicant's attorney an opportunity to controvert
55 or comment upon any portion of the report.

56 (f) If a certificate of employability is issued by the board while an
57 eligible offender is on probation or parole, the certificate shall be
58 deemed to be a temporary certificate until the person completes such
59 person's period of probation or parole. During the period that such
60 certificate is temporary, the board may revoke such certificate for
61 violation of the conditions of such person's probation or parole. Prior
62 to any such revocation, the board shall give such person notice and an
63 opportunity to be heard. If the certificate is not revoked, it shall
64 become a permanent certificate upon completion of such person's
65 period of probation or parole.

66 (g) The board may at any time issue a new certificate to enlarge the
67 relief previously granted, and the provisions of subsections (a) to (e),
68 inclusive, of this section shall apply to the issuance of any new
69 certificate.

70 (h) The application for a certificate of employability, the certificate
71 of employability and the revocation of a certificate of employability
72 shall be in such form and contain such information as the Board of
73 Pardons and Paroles shall prescribe.

74 Sec. 3. (NEW) (*Effective October 1, 2006*) A court may, when
75 sentencing a person convicted of a crime and upon such person's
76 request, refer such person to the Board of Pardons and Paroles for
77 expedited consideration by the board of an application by such person
78 for the issuance of a certificate of employability pursuant to section 2
79 of this act.

80 Sec. 4. (NEW) (*Effective October 1, 2006*) (a) Each state agency that
81 issues licenses shall collect and maintain data on the number of eligible
82 offenders who (1) presented a certificate of employability and were (A)
83 issued a license, or (B) denied a license, and (2) did not present a
84 certificate of employability and were (A) issued a license, or (B) denied
85 a license.

86 (b) The Board of Pardons and Paroles shall collect and maintain data
87 on the number of eligible offenders who (1) applied for a certificate of
88 employability, and (2) were (A) issued a certificate, and (B) denied a
89 certificate.

90 Sec. 5. Section 46a-80 of the general statutes is repealed and the
91 following is substituted in lieu thereof (*Effective October 1, 2006*):

92 (a) Except as provided in subsection (b) of this section and
93 subsection (b) of section 46a-81, and notwithstanding any other
94 provisions of law to the contrary, a person shall not be disqualified
95 from employment by the state of Connecticut or any of its agencies,
96 nor shall a person be disqualified to practice, pursue or engage in any
97 occupation, trade, vocation, profession or business for which a license,
98 permit, certificate or registration is required to be issued by the state of
99 Connecticut or any of its agencies solely because of a prior conviction
100 of a crime.

101 (b) A person may be denied employment by the state or any of its
102 agencies, or a person may be denied a license, permit, certificate or
103 registration to pursue, practice or engage in an occupation, trade,
104 vocation, profession or business by reason of the prior conviction of a
105 crime if, after considering (1) the nature of the crime and its

106 relationship to the job for which the person has applied, [;] (2)
107 information pertaining to the degree of rehabilitation of the convicted
108 person, [;] and (3) the time elapsed since the conviction or release, the
109 state [;] or any of its agencies determines that (A) the [applicant is not
110 suitable for the position of employment sought or the specific
111 occupation, trade, vocation, profession or business for which the
112 license, permit, certificate or registration is sought] nature of the crime
113 has a direct bearing on such person's fitness or ability to perform one
114 or more of the duties and responsibilities necessarily related to the
115 employment or license, permit, certificate or registration sought, (B)
116 the person is not sufficiently rehabilitated, or (C) insufficient time has
117 elapsed since the conviction or release. In making a determination
118 pursuant to this subsection, the state or any of its agencies shall also
119 give consideration to a certificate of employability issued pursuant to
120 section 2 of this act, which certificate shall create a presumption of
121 rehabilitation and passage of sufficient time since the conviction or
122 release with respect to the crime or crimes specified in the certificate.

123 (c) If a conviction of a crime is used as a basis for rejection of an
124 applicant, such rejection shall be in writing and specifically state the
125 evidence presented and reasons for rejection. A copy of such rejection
126 shall be sent by registered mail to the applicant.

127 (d) In no case may records of arrest, which are not followed by a
128 conviction, or records of convictions, which have been erased, be used,
129 distributed or disseminated by the state or any of its agencies in
130 connection with an application for employment or for a permit, license,
131 certificate or registration.

132 Sec. 6. Section 46a-99 of the general statutes is repealed and the
133 following is substituted in lieu thereof (*Effective October 1, 2006*):

134 Any person claiming to be aggrieved by a violation of any provision
135 of sections 46a-70 to 46a-78, inclusive, section 46a-80, as amended by
136 this act, or sections 46a-81h to 46a-81o, inclusive, may petition the
137 Superior Court for appropriate relief and said court shall have the
138 power to grant such relief, by injunction or otherwise, as it deems just

139 and suitable.

140 Sec. 7. Section 54-130a of the general statutes is repealed and the
141 following is substituted in lieu thereof (*Effective October 1, 2006*):

142 (a) Jurisdiction over the granting of, and the authority to grant,
143 commutations of punishment or releases, conditioned or absolute, in
144 the case of any person convicted of any offense against the state and
145 commutations from the penalty of death shall be vested in the Board of
146 Pardons and Paroles.

147 (b) Said board shall have authority to grant pardons, conditioned,
148 provisional or absolute, for any offense against the state at any time
149 after the imposition and before or after the service of any sentence.

150 (c) Whenever the board grants an absolute pardon to any person,
151 the secretary of said board shall cause notification of such pardon to be
152 made in writing to the clerk of the court in which such person was
153 convicted, or the Office of the Chief Court Administrator if such
154 person was convicted in the Court of Common Pleas, the Circuit
155 Court, a municipal court, or a trial justice court.

156 (d) Whenever the board grants a provisional pardon to any person,
157 it shall issue a certificate of rehabilitation to such person. The secretary
158 of the board shall cause notification of such pardon to be made in
159 writing to the clerk of the court in which such person was convicted.
160 The granting of a provisional pardon and the issuance of a certificate
161 of rehabilitation does not entitle such person to erasure of the record of
162 the conviction of the offense or relieve such person from disclosing the
163 existence of such conviction as may be required. The chairperson of the
164 board, in consultation with the executive director, shall adopt
165 regulations in accordance with chapter 54 concerning the application
166 process for and criteria for the granting of provisional pardons.

167 Sec. 8. Section 31-51i of the general statutes is repealed and the
168 following is substituted in lieu thereof (*Effective October 1, 2006*):

169 (a) For the purposes of this section, "employer" means any person

170 engaged in business who has one or more employees, including the
171 state or any political subdivision of the state.

172 (b) No employer or an employer's agent, representative or designee
173 may require an employee or prospective employee to disclose the
174 existence of any arrest, criminal charge or conviction, the records of
175 which have been erased pursuant to section 46b-146, 54-76o or 54-142a.

176 (c) An employment application form that contains any question
177 concerning the criminal history of the applicant shall contain a notice,
178 in clear and conspicuous language: (1) That the applicant is not
179 required to disclose the existence of any arrest, criminal charge or
180 conviction, the records of which have been erased pursuant to section
181 46b-146, 54-76o or 54-142a, (2) that criminal records subject to erasure
182 pursuant to section 46b-146, 54-76o or 54-142a are records pertaining to
183 a finding of delinquency or that a child was a member of a family with
184 service needs, an adjudication as a youthful offender, a criminal charge
185 that has been dismissed or nolle, a criminal charge for which the
186 person has been found not guilty or a conviction for which the person
187 received an absolute pardon, and (3) that any person whose criminal
188 records have been erased pursuant to section 46b-146, 54-76o or 54-
189 142a shall be deemed to have never been arrested within the meaning
190 of the general statutes with respect to the proceedings so erased and
191 may so swear under oath.

192 (d) No employer or an employer's agent, representative or designee
193 shall deny employment to a prospective employee solely on the basis
194 that the prospective employee had a prior arrest, criminal charge or
195 conviction, the records of which have been erased pursuant to section
196 46b-146, 54-76o or 54-142a or that the prospective employee had a prior
197 conviction for which the prospective employee has received a
198 provisional pardon pursuant to section 54-130a, as amended by this
199 act.

200 (e) No employer or an employer's agent, representative or designee
201 shall discharge, or cause to be discharged, or in any manner
202 discriminate against, any employee solely on the basis that the

203 employee had, prior to being employed by such employer, an arrest,
204 criminal charge or conviction, the records of which have been erased
205 pursuant to section 46b-146, 54-76o or 54-142a or that the employee
206 had, prior to being employed by such employer, a prior conviction for
207 which the employee has received a provisional pardon pursuant to
208 section 54-130a, as amended by this act.

209 (f) The portion of an employment application form which contains
210 information concerning the criminal history record of an applicant or
211 employee shall only be available to the members of the personnel
212 department of the company, firm or corporation or, if the company,
213 firm or corporation does not have a personnel department, the person
214 in charge of employment, and to any employee or member of the
215 company, firm or corporation, or an agent of such employee or
216 member, involved in the interviewing of the applicant.

217 (g) Notwithstanding the provisions of subsection (f) of this section,
218 the portion of an employment application form which contains
219 information concerning the criminal history record of an applicant or
220 employee may be made available as necessary to persons other than
221 those specified in said subsection (f) by:

222 (1) A broker-dealer or investment adviser registered under chapter
223 672a in connection with (A) the possible or actual filing of, or the
224 collection or retention of information contained in, a form U-4 Uniform
225 Application for Securities Industry Registration or Transfer, (B) the
226 compliance responsibilities of such broker-dealer or investment
227 adviser under state or federal law, or (C) the applicable rules of self-
228 regulatory organizations promulgated in accordance with federal law;

229 (2) An insured depository institution in connection with (A) the
230 management of risks related to safety and soundness, security or
231 privacy of such institution, (B) any waiver that may possibly or
232 actually be sought by such institution pursuant to section 19 of the
233 Federal Deposit Insurance Act, 12 USC 1829(a), (C) the possible or
234 actual obtaining by such institution of any security or fidelity bond, or
235 (D) the compliance responsibilities of such institution under state or

236 federal law; and

237 (3) An insurance producer licensed under chapter 701a in
238 connection with (A) the management of risks related to security or
239 privacy of such insurance producer, or (B) the compliance
240 responsibilities of such insurance producer under state or federal law.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	New section
Sec. 2	<i>October 1, 2006</i>	New section
Sec. 3	<i>October 1, 2006</i>	New section
Sec. 4	<i>October 1, 2006</i>	New section
Sec. 5	<i>October 1, 2006</i>	46a-80
Sec. 6	<i>October 1, 2006</i>	46a-99
Sec. 7	<i>October 1, 2006</i>	54-130a
Sec. 8	<i>October 1, 2006</i>	31-51i

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Public Health, Dept.	GF - Cost	50,00-60,000	50,000-60,000
Correction, Dept.	GF - Cost	Significant	Significant
Consumer Protection, Dept.	GF - Cost	121,047	116,084
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	Significant	Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a significant cost to the Board of Pardons and Parole (BPP), within the Department of Correction (DOC). The bill allows the BPP to issue a certificate of employability to a convicted state resident. The potential applicant pool could include 50,000 probationers and 2,500 current parolees, as well as others not currently under supervision.

The bill allows the BPP to assign staff members to investigate the potential applicant, and submit a report, prior to granting a certificate. Applicants eligible for a certificate can dispute any part of the report, and are also allowed to comment on the report. Since the potential applicant pool is so sizeable, the BPP would require additional staff, potentially including additional Parole Officers (average annual salary of \$58,000). The extent of the number of staff needed and the amount of cost cannot be determined at this time, but is anticipated to be significant.

The bill also requires that state agencies, who issue licenses, collect certain data on the number of eligible offenders. Certain state agencies including the Department of Health and the Department of Consumer

Protection would incur a minimal cost associated with this task; other state agencies would incur a work load increase, but would not incur a fiscal impact.

The Department of Public Health will incur a one-time cost of \$35,000 - \$45,000 to retain computer consultant services needed to modify the agency's licensure database so as to capture data required within Section 4 of the bill. An additional \$15,000 will be incurred to produce new licensure application forms. The agency licenses or certifies approximately 181,000 individuals under 94 professional categories.

The Department of Consumer Protection (DCP) processes a significant number of license applications each year, a percentage of which are from inmates and those who have just been released from jail. The additional requirements under the bill would result in a total state cost of \$151,117 in FY 07. It is anticipated that DCP would incur costs related to one Hearings Attorney (annual salary of \$70,077), one Paralegal Specialist (annual salary of \$44,258), and costs in Other Expenses and Equipment for office supplies and software.¹ The costs are displayed in the table below:

Description	FY 07 (\$)	FY 08 (\$)
Personal Services	114,334	114,334
Other Expenses	2,880	1,750
Equipment	3,833	
TOTAL	121,047	116,084

The bill also authorizes the BPP to issue provisional pardons, to certain qualifying individuals. The granting of provisional pardons is

¹ The estimated first year fringe benefit rate as a percentage of payroll is 23.6%, effective July 1, 2005. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2005-06 fringe benefit rate is 34.7%, which when combined with the non pension fringe benefit rate would total 58.3%.

anticipated to result in a work load increase, but is not anticipated to result in a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5781*****AN ACT CONCERNING CERTIFICATES OF EMPLOYABILITY AND REHABILITATION.*****SUMMARY:**

This bill authorizes the Board of Pardons and Paroles to issue certificates of employability to relieve offenders of certain barriers or forfeitures due to their conviction of crimes named in the certificate. The bill alters the state policy on hiring and licensing offenders and declares that a certificate of employability creates a presumption of rehabilitation and passage of sufficient time for the crime specified in it and requires the agency to consider the certificate in its determination of whether to offer employment or issue an occupational license or other credential.

The bill also authorizes the board to issue provisional pardons that include a certificate of rehabilitation. It prohibits employers from denying employment to a prospective employee or discharging or discriminating against an employee solely on the basis of a prior conviction for which the person received a provisional pardon (§ 8). Under current law, these prohibitions apply to prior arrests, criminal charges, or legally erased records of convictions (for delinquencies, families with service needs, youthful offenders, criminal charges that were dismissed or nolle, criminal charges resulting in not guilty verdicts, and pardoned convictions).

EFFECTIVE DATE: October 1, 2006

CERTIFICATES OF EMPLOYABILITY

The bill allows the board to issue a certificate of employability if (1) the person was convicted of a crime in Connecticut or another jurisdiction and resides in the state, (2) the relief in the certificate may

promote the public policy of rehabilitating ex-offenders through employment, and (3) the relief in the certificate is consistent with the public interest in public safety and protecting property (§ 2).

The bill allows the court at sentencing to refer a person convicted of a crime to the board for expedited consideration of an application for a certificate, if the person requests it (§ 3).

Barriers and Forfeitures

Under the bill, the certificate of employability can apply to all of the eligible barriers or forfeitures or it can specify particular ones. It can limit the certificate to specific types of employment or licenses for which the offender is otherwise qualified.

A “barrier” is the denial of employment or a license because of a criminal conviction without considering whether the nature of the crime bears a direct relationship to the employment or license. A “forfeiture” is a disqualification or ineligibility for employment or a license by reason of law based on the offender’s criminal conviction.

“Employment” is any remunerative work, occupation, vocation, or any form of vocational training but not employment with law enforcement.

A “license” is any license, permit, certificate, or registration required by the state or an agency to pursue, practice, or engage in an occupation, trade, vocation, profession, or business.

The certificate cannot apply to eligibility for or the right to retain public office.

Issuing Certificates

To determine whether to issue a certificate, the board can have its staff investigate the applicant and submit a report. If written, the report is confidential and cannot be disclosed except as required or permitted by statute or on the board’s specific authorization. The board can allow the applicant or his attorney to examine the report and

give them an opportunity to dispute or comment on any part of it.

Certificates issued while an offender is on probation or parole are temporary certificates and the board can revoke one for violating probation or parole conditions. The board must notify the person and provide an opportunity for a hearing before revoking it. A certificate that is not revoked becomes permanent on completing probation or parole.

At any time, the board can follow the same procedures to issue a new certificate that enlarges the relief granted.

The board creates the forms and sets required information for the certificates, applications for them, and revocations of them.

Collecting Data on Certificates

The bill requires state agencies that issue licenses to collect data on the number of eligible offenders who:

1. present a certificate and are (a) issued a license or (b) denied a license and
2. did not present a certificate and are (a) issued a license or (b) denied a license.

It requires the board to collect data on the number of eligible offenders who apply for a certificate and are either issued or denied one (§ 4).

STATE POLICY ON HIRING AND LICENSING OFFENDERS

By law, a person is not disqualified from state employment or from practicing, pursuing, or engaging in an occupation, trade, vocation, profession, or business that requires the state to issue a license, permit, certificate, or registration solely because of a prior criminal conviction.

But current law allows a person to be denied state employment or one of these credentials because of a prior conviction if the person is found unsuitable after considering (1) the nature of the crime and its

relationship to the job, (2) information on the person's rehabilitation, and (3) the time elapsed since conviction or release. Under the bill, after considering these factors, the agency must instead determine in order to deny employment or a credential that the (1) nature of the crime has a direct bearing on the person's fitness or ability to perform one or more of the duties and responsibilities necessarily related to the employment or credential, (2) person is insufficiently rehabilitated, or (3) insufficient time has passed. The bill also declares that a certificate of employability creates a presumption of rehabilitation and passage of sufficient time for the crime specified in it and requires the agency to consider the certificate in its determination.

By law, these provisions prevail over agencies' authority to deny credentials based on the lack of good moral character and to suspend or revoke them based on conviction of a crime. These provisions do not apply to law enforcement agencies but an agency can adopt such a policy.

The law also (1) requires a written rejection specifically stating evidence and reasons when a criminal conviction is the basis for rejecting an applicant, with a copy sent the applicant by registered mail and (2) prohibits the state or any agency from using, distributing, or disseminating arrest records that are not followed by a conviction and conviction records that are erased for any job or credential applications (§ 5).

Regarding these provisions in the bill and current law on state hiring and licensing, the bill gives a person aggrieved by a violation of them a right to petition the Superior Court for appropriate relief and the court has the power to grant relief deemed just and suitable, including issuing injunctions (§ 6).

PROVISIONAL PARDONS

The bill authorizes the board to issue provisional pardons. When granted, the board must (1) issue the person a certificate of rehabilitation and (2) provide written notification to the clerk of the

court where the person was conviction. This does not erase the conviction record and the person must still disclose the conviction as may be required. The board chairman, in consultation with the executive director, must adopt regulations for the application process and criteria for granting provisional pardons (§ 7).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 2 (03/24/2006)