



# House of Representatives

General Assembly

**File No. 139**

January Session, 2007

Substitute House Bill No. 7209

*House of Representatives, March 26, 2007*

The Committee on General Law reported through REP. STONE of the 9th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING CONSUMER REPORTING AGENCIES AND PUBLIC RECORD INFORMATION REPORTING.**

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

1 Section 1. Section 31-51i of the general statutes is amended by  
2 adding subsections (h) to (j), inclusive, as follows (*Effective from*  
3 *passage*):

4 (NEW) (h) A consumer reporting agency, as defined in section 38a-  
5 976, that furnishes a consumer report for employment purposes and  
6 includes in such report matters of public record concerning the  
7 consumer shall, at the time the agency furnishes such report to the  
8 user, notify the consumer that the agency is reporting matters of public  
9 record, together with the name and address of the person to whom  
10 such information is being reported. For purposes of this section,  
11 "matters of public record" means information obtained from the  
12 Judicial Department relating to arrests, indictments, convictions,  
13 erased records, pardons and outstanding judgments.

14 (NEW) (i) In an action against a consumer reporting agency  
15 pursuant to this section, it shall be an affirmative defense that such  
16 agency supplied the same consumer public record information as such  
17 agency obtained from the Judicial Department.

18 (NEW) (j) Subsection (a) of this section shall not apply in the case of  
19 an agency or department of the United States government seeking to  
20 obtain and use a consumer report for employment purposes if the  
21 head of the agency or department makes a written finding pursuant to  
22 15 USC 1681b(b)(4)(A).

23 Sec. 2. (NEW) (*Effective from passage*) The Judicial Department shall:  
24 (1) Update its criminal history record information not later than two  
25 business days after a criminal record is erased, modified or corrected  
26 or when a pardon is granted; (2) post a notice on any criminal record  
27 information disseminated by said department that the information  
28 contained in such notice may change daily due to erasures, corrections,  
29 pardons and other changes to individual records and that the accuracy  
30 of the data cannot be confirmed other than on the day of the posting;  
31 and (3) only post updated information on said department's web site  
32 that is available to the public through the State Police Bureau of  
33 Identification and not information available through the Offender  
34 Based Tracking System.

|   |                     |             |
|---|---------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: |                     |             |
| Section 1   | <i>from passage</i> | 31-51i      |
| Sec. 2  | <i>from passage</i> | New section |

**GL**            *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 chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

| Agency Affected                        | Fund-Effect | FY 08 \$    | FY 09 \$    |
|--|-------------|-------------|-------------|
| Judicial Department (Court Operations) | GF - Cost   | Significant | Significant |

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

Section 2 of the bill places three requirements on the Judicial Department, two of which have fiscal impacts.

1) The Department must update its criminal history record information not later than two business days after a criminal record is erased, modified or corrected or when a pardon is granted. **Fiscal impact: significant ongoing cost for additional personnel. The Department could not meet this deadline absent additional staffing. It is anticipated that several Court Operations Assistant positions would need to be added to comply with this provision. The annual cost for each filled position is about \$65,600, including fringe benefits.<sup>1</sup>**

2) The Department must post a notice on any criminal record information disseminated by it that the information contained in such notice may change daily due to erasures, corrections, pardons and

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. 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 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

other changes to individual records and that the accuracy of the data cannot be confirmed other than on the day of the posting. **Fiscal impact: none. There is no cost associated with posting a notice.**

3) The Department must only post updated information on its web site that is available to the public through the State Police Bureau of Identification. **Fiscal impact: minimal (less than \$50,000) one-time cost. The Department would likely require the services of an outside contractor to modify its software so that the information presented by the Department complies with this provision.**

### ***The Out Years***

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

**OLR Bill Analysis**

**sHB 7209**

***AN ACT CONCERNING CONSUMER REPORTING AGENCIES AND PUBLIC RECORD INFORMATION REPORTING.***

**SUMMARY:**

This bill (1) requires consumer reporting agencies to inform consumers when they are providing reports for employment purposes that include certain “matters of public record,” such as arrest and conviction records; (2) requires the Judicial Department to update certain criminal history record information within two business days; and (3) exempts federal agencies from complying with state law prohibiting employers from taking adverse actions based on erased criminal records under certain circumstances.

EFFECTIVE DATE: Upon passage

**CONSUMER REPORTING AGENCIES**

This bill requires consumer reporting agencies that provide certain reports for employment purposes that include matters of public record about a consumer to notify the consumer of (1) the fact that it is reporting public record information and (2) of the name and address of the person to whom the information is being sent. The bill defines “matters of public record” as information obtained from the Judicial Department relating to arrests, indictments, convictions, erased records, pardons, and outstanding judgments. The agency must send the notice when it provides the information.

The bill applies to consumer reporting agencies, which the law defines as any person who (1) regularly engages in assembling or preparing consumer reports for a fee, (2) obtains information from sources other than insurance companies, and (3) furnishes consumer reports to other persons (CGS § 38a-976). The agencies issue reports in

connection with insurance transactions. They are similar to credit rating agencies, which are persons whose business is assembling and evaluating information as to the credit standing and credit worthiness of a consumer, for the purpose of furnishing credit reports to third parties for fees and dues (CGS § 36a-695).

The bill makes it an affirmative defense in any action against a consumer reporting agency that it supplied the same information that it obtained from the Judicial Department.

### **JUDICIAL DEPARTMENT RECORDS**

The bill requires the Judicial Department to (1) update its criminal history record information not later than two business days after a criminal record is erased, modified, or corrected or when a pardon is granted; (2) post a notice on criminal record information it disseminates that the information in it may change daily due to erasures, corrections, pardons, and other changes to individual records and that data accuracy cannot be confirmed on any day other than the day of the posting; and (3) only post updated information on its web site that is available to the public through the State Police Bureau of Identification and not information available through the Offender Based Tracking System.

### **FEDERAL AGENCIES**

State law prohibits employers, which it defines as any person engaged in business who has one or more employees including the state and its political subdivisions, from taking certain actions against people who have had their arrest, criminal charge, or conviction records erased (see BACKGROUND). The bill exempts a federal agency or department seeking to obtain and use a consumer report for employment purposes from the definition of employer if its head has made a written finding in accordance with federal law (see BACKGROUND).

### **BACKGROUND**

#### ***Erased Records***

The law prohibits an employer from requiring an employee or prospective employee to disclose records and from denying employment or discharging an employee solely because of records of erased arrest, criminal charges, or convictions. It requires an employment application form asking for criminal history information to contain a clear notice that the applicant does not need to disclose erased information and that the applicant is considered never to have been arrested and can so swear under oath. The erased records covered by the law include those relating to delinquency; families with service needs; youthful offender status; criminal charges that have been dismissed, nolle, or resulted in a not guilty finding; and absolute pardons (CGS § 31-51i).

***Exemption in Federal Law from Federal Consumer Notification Requirement***

Federal law on consumer reporting agencies restricts the permissible uses of consumer reports (15 USC § 1681b). It requires credit reporting agencies to notify consumers before a report about them is provided for employment purposes. The law prohibits a person using a credit report for employment purposes from taking an adverse action based on it unless the person has given the consumer a copy of the report and a description of the consumer's rights under federal law. It creates an exemption for federal agencies in matters related to national security investigations. The notification requirement does not apply if the federal agency head makes a written finding that (1) the consumer report is relevant to a national security investigation of the agency; (2) the investigation is within the agency's jurisdiction; and (3) there is reason to believe that compliance with the notification requirement will (a) endanger the life or physical safety of any person, (b) result in flight from prosecution, (c) result in the destruction of or tampering with evidence relevant to the investigation, (d) result in the intimidation of potential witnesses, (e) result in compromising classified information, or (f) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding (15 USC § 1681b(b)(4)(A)).

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 19 Nay 0 (03/08/2007)