



Senate

General Assembly

File No. 579

February Session, 2010

Substitute Senate Bill No. 399

Senate, April 15, 2010

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT ESTABLISHING A CIVIL ACTION WITH RESPECT TO
CRIMINAL RECORDS USED IN EMPLOYMENT DECISIONS.***

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 Section 31-51i of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) For the purposes of this section, "employer" means any person
4 engaged in business who has one or more employees, including the
5 state or any political subdivision of the state.

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

10 (c) An employment application form that contains any question
11 concerning the criminal history of the applicant shall contain a notice,
12 in clear and conspicuous language: (1) That the applicant is not

13 required to disclose the existence of any arrest, criminal charge or
14 conviction, the records of which have been erased pursuant to section
15 46b-146, 54-76o or 54-142a, (2) that criminal records subject to erasure
16 pursuant to section 46b-146, 54-76o or 54-142a are records pertaining to
17 a finding of delinquency or that a child was a member of a family with
18 service needs, an adjudication as a youthful offender, a criminal charge
19 that has been dismissed or nolle, a criminal charge for which the
20 person has been found not guilty or a conviction for which the person
21 received an absolute pardon, and (3) that any person whose criminal
22 records have been erased pursuant to section 46b-146, 54-76o or 54-
23 142a shall be deemed to have never been arrested within the meaning
24 of the general statutes with respect to the proceedings so erased and
25 may so swear under oath.

26 (d) No employer or an employer's agent, representative or designee
27 shall deny employment to a prospective employee solely on the basis
28 that the prospective employee had a prior arrest, criminal charge or
29 conviction, the records of which have been erased pursuant to section
30 46b-146, 54-76o or 54-142a or that the prospective employee had a prior
31 conviction for which the prospective employee has received a
32 provisional pardon pursuant to section 54-130a.

33 (e) No employer or an employer's agent, representative or designee
34 shall discharge, or cause to be discharged, or in any manner
35 discriminate against, any employee solely on the basis that the
36 employee had, prior to being employed by such employer, an arrest,
37 criminal charge or conviction, the records of which have been erased
38 pursuant to section 46b-146, 54-76o or 54-142a or that the employee
39 had, prior to being employed by such employer, a prior conviction for
40 which the employee has received a provisional pardon pursuant to
41 section 54-130a.

42 (f) The portion of an employment application form which contains
43 information concerning the criminal history record of an applicant or
44 employee shall only be available to the members of the personnel
45 department of the company, firm or corporation or, if the company,

46 firm or corporation does not have a personnel department, the person
47 in charge of employment, and to any employee or member of the
48 company, firm or corporation, or an agent of such employee or
49 member, involved in the interviewing of the applicant.

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

55 (1) A broker-dealer or investment adviser registered under chapter
56 672a in connection with (A) the possible or actual filing of, or the
57 collection or retention of information contained in, a form U-4 Uniform
58 Application for Securities Industry Registration or Transfer, (B) the
59 compliance responsibilities of such broker-dealer or investment
60 adviser under state or federal law, or (C) the applicable rules of self-
61 regulatory organizations promulgated in accordance with federal law;

62 (2) An insured depository institution in connection with (A) the
63 management of risks related to safety and soundness, security or
64 privacy of such institution, (B) any waiver that may possibly or
65 actually be sought by such institution pursuant to section 19 of the
66 Federal Deposit Insurance Act, 12 USC 1829(a), (C) the possible or
67 actual obtaining by such institution of any security or fidelity bond, or
68 (D) the compliance responsibilities of such institution under state or
69 federal law; and

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

74 (h) (1) For the purposes of this subsection: (A) "Consumer reporting
75 agency" means any person who regularly engages, in whole or in part,
76 in the practice of assembling or preparing consumer reports for a fee,
77 which reports compile and report items of information on consumers

78 that are matters of public record and are likely to have an adverse
79 effect on a consumer's ability to obtain employment, but does not
80 include any public agency; (B) "consumer report" means any written,
81 oral or other communication of information bearing on an individual's
82 credit worthiness, credit standing, credit capacity, character, general
83 reputation, personal characteristics or mode of living; and (C)
84 "criminal matters of public record" means information obtained from
85 the Judicial Department relating to arrests, indictments, convictions,
86 outstanding judgments, and any other conviction information, as
87 defined in section 54-142g.

88 (2) Each consumer reporting agency that issues a consumer report
89 that is used or is expected to be used for employment purposes and
90 that includes in such report criminal matters of public record
91 concerning the consumer shall:

92 (A) At the time the consumer reporting agency issues such
93 consumer report to a person other than the consumer who is the
94 subject of the report, provide the consumer who is the subject of the
95 consumer report (i) notice that the consumer reporting agency is
96 reporting criminal matters of public record, and (ii) the name and
97 address of the person to whom such consumer report is being issued;

98 (B) Maintain procedures designed to ensure that any criminal
99 matter of public record reported is complete and up-to-date as of the
100 date the consumer report is issued, which procedures shall, at a
101 minimum, conform to the requirements set forth in section 54-142e, as
102 amended by this act.

103 (3) This subsection shall not apply in the case of an agency or
104 department of the United States government seeking to obtain and use
105 a consumer report for employment purposes if the head of the agency
106 or department makes a written finding pursuant to 15 USC
107 1681b(b)(4)(A).

108 (i) Any employer, employer's agent, representative or designee, or
109 any consumer reporting agency, that knowingly violates any provision

110 of this section or knowingly aids in the violation of any provision of
111 this section shall be liable in a civil action to the person aggrieved by
112 such violation for damages, together with costs and a reasonable
113 attorney's fee.

114 Sec. 2. Section 54-142e of the general statutes is repealed and the
115 following is substituted in lieu thereof (*Effective October 1, 2010*):

116 (a) Notwithstanding the provisions of subsection (e) of section 54-
117 142a and section 54-142c, with respect to any person, including, but not
118 limited to, a consumer reporting agency as defined in subsection (h) of
119 section 31-51i, as amended by this act, who purchases criminal matters
120 of public record, as defined in said subsection (h), from the Judicial
121 Department, the department shall make available to such person
122 information concerning such criminal matters of public record that
123 have been erased pursuant to section 54-142a. Such information may
124 include docket numbers or other information that permits the person
125 to identify and permanently delete records that have been erased
126 pursuant to section 54-142a.

127 (b) Each person, including, but not limited to, a consumer reporting
128 agency, that has purchased records of criminal matters of public record
129 from the Judicial Department shall, prior to disclosing such records, (1)
130 purchase from the Judicial Department, on a monthly basis or on such
131 other schedule as the Judicial Department may establish, any updated
132 criminal matters of public record or information available for the
133 purpose of complying with this section, and (2) update its records of
134 criminal matters of public record to permanently delete such erased
135 records. Such person shall not further disclose such erased records.
136 Any person, including, but not limited to, a consumer reporting
137 agency, that knowingly violates any provision of this subsection or
138 knowingly aids in the violation of any provision of this subsection
139 shall be liable in a civil action to the person aggrieved by such
140 violation for damages, together with costs and a reasonable attorney's
141 fee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	31-51i
Sec. 2	<i>October 1, 2010</i>	54-142e

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: See Below

Municipal Impact: See Below

Explanation

The bill would subject the state to potential liability which it would otherwise be exempt given sovereign immunity. The bill would also subject municipalities to potential increased liabilities. A potential future cost could result to the extent that future judgments or settlements are made against these entities.

The Out Years

The ongoing potential future liability would continue into the out years.

OLR Bill Analysis**sSB 399*****AN ACT ESTABLISHING A CIVIL ACTION WITH RESPECT TO CRIMINAL RECORDS USED IN EMPLOYMENT DECISIONS.*****SUMMARY:**

This bill permits an employee or prospective employee, as applicable, to bring a civil action for damages, court costs, and reasonable attorney's fees against an employer or the employer's agent, representative, or designee that knowingly (1) requests the disclosure of erased criminal records; (2) denies a prospective employee a job based solely on an erased record, or on the basis of a prior conviction for which the person received a provisional pardon; or (3) discharges or otherwise discriminates against the employee solely on such a basis. The covered erased records pertain to:

1. juvenile delinquency or families with service needs,
2. youthful offenders,
3. dismissed or nulled criminal charges,
4. criminal charges for which a person has been found not guilty,
or
5. criminal convictions that are pardoned.

The bill subjects a consumer reporting agency to the same liability if it knowingly fails to (1) provide notice when providing reports for employment that include criminal matters of public record or (2) ensure that the information provided is complete and up to date.

Lastly, the bill makes anyone, including a consumer reporting agency, liable to an aggrieved person for civil damages, costs, and

reasonable attorney's fees for knowingly disclosing criminal matters of public record purchased from the Judicial Department without first updating the records and permanently deleting any records erased because (1) a criminal charge was dismissed or nolle, (2) an accused was found not guilty, or (3) a conviction was pardoned.

EFFECTIVE DATE: October 1, 2010

BACKGROUND

Employer

An employer is any person engaged in business who has one or more employees, including the state or any political subdivision.

Consumer Reporting Agencies

A "consumer reporting agency" is anyone who, or any company that, for a fee, regularly engages in assembling or preparing consumer reports using information that is a matter of public record and likely to have an adverse effect on a consumer's ability to obtain employment. It does not include a public agency.

A "consumer report" is a written, oral, or other communication of information bearing on an individual's credit, character, general reputation, personal characteristics, or mode of living.

Consumer reporting agencies must:

1. (a) inform consumers when they are providing reports for employment purposes that include "criminal matters of public record" and (b) provide the name and address of the report recipient and
2. maintain procedures designed to ensure that any criminal matter of public record reported is complete and up to date when issued.

These requirements do not apply to federal agencies seeking consumer reports in certain circumstances related to national security investigations.

Criminal Matter Records

“Criminal matters of public record” is information obtained from the Judicial Department relating to arrests, indictments, convictions, outstanding judgments, and any other criminal history record information that has not been erased and which discloses that a person has pleaded guilty or *nolo contendere* (no contest) to, or was convicted of, any criminal offense, and the terms of the sentence.

Related Bill

sHB 5207, reported favorably by the Labor and Public Employees Committee and Government Administration and Elections Committee, prohibits state employers from asking about a prospective employee’s past convictions using a consumer report until the person is deemed qualified for the position and given a conditional offer of employment. It does not apply to law enforcement agencies or when a statute specifically disqualifies someone from employment because of a prior conviction of a crime.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (03/29/2010)