



General Assembly

February Session, 2010

Raised Bill No. 399

LCO No. 1951

01951_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

**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 Section 31-51i of the general statutes is repealed and the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 person aggrieved by a violation of this section may bring a

109 civil action in the Superior Court to recover damages, together with
 110 costs and a reasonable attorney's fee.

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 Section 54-142e of the general statutes is repealed and the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

113 (a) Notwithstanding the provisions of subsection (e) of section 54-
 114 142a and section 54-142c, with respect to any person, including, but not
 115 limited to, a consumer reporting agency as defined in subsection (h) of
 116 section 31-51i, as amended by this act, who purchases criminal matters
 117 of public record, as defined in said subsection (h), from the Judicial
 118 Department, the department shall make available to such person
 119 information concerning such criminal matters of public record that
 120 have been erased pursuant to section 54-142a. Such information may
 121 include docket numbers or other information that permits the person
 122 to identify and permanently delete records that have been erased
 123 pursuant to section 54-142a.

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

Statement of Purpose:

To permit a civil action against a consumer reporting agency or an employer, employer's agent, representative or designee for a violation of statutory requirements concerning the request for, use of and reporting of criminal records with respect to employment decisions.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]