



Senate

General Assembly

File No. 607

January Session, 2011

Senate Bill No. 1148

Senate, April 20, 2011

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the 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 Section 31-51i of the general statutes is repealed and the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, 2011*):

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 knowingly require an employee or prospective employee to
8 disclose the existence of any arrest, criminal charge or conviction, the
9 records of which have been erased pursuant to section 46b-146, 54-76o
10 or 54-142a.

11 (c) An employment application form that contains any question
12 concerning the criminal history of the applicant shall contain a notice,

13 in clear and conspicuous language: (1) That the applicant is not
14 required to disclose the existence of any arrest, criminal charge or
15 conviction, the records of which have been erased pursuant to section
16 46b-146, 54-76o or 54-142a, (2) that criminal records subject to erasure
17 pursuant to section 46b-146, 54-76o or 54-142a are records pertaining to
18 a finding of delinquency or that a child was a member of a family with
19 service needs, an adjudication as a youthful offender, a criminal charge
20 that has been dismissed or nolle, a criminal charge for which the
21 person has been found not guilty or a conviction for which the person
22 received an absolute pardon, and (3) that any person whose criminal
23 records have been erased pursuant to section 46b-146, 54-76o or 54-
24 142a shall be deemed to have never been arrested within the meaning
25 of the general statutes with respect to the proceedings so erased and
26 may so swear under oath.

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

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

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

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

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

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

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

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

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

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

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

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

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

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 who
109 knowingly engages in conduct prohibited by any provision of

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	31-51i

JUD *Joint Favorable*

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:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Attorney General	GF - Potential Cost	See Below	See Below
Comptroller - Adjudicated Claims Account	GF - Potential Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 12 \$	FY 13 \$
All Municipalities	Potential Cost	See Below	See Below

Explanation

The bill results in a potential cost to the state and municipalities as it explicitly allows an employee or prospective employee to bring a civil action for damages, court costs and reasonable attorney's fees against an employer for violations under current statute in certain hiring practices. Any damages rewarded in cases brought against the state would be paid through the Adjudicated Claims account. The Adjudicated Claims account expended \$9.5 million on average over the last 5 years.

There could be significant costs of defense of such cases. To the extent such cases are brought against the state, they would be very fact-sensitive and, therefore, very difficult to dispose of without trials.

The Out Years

The fiscal impact above would continue into the out years subject to the number of cases brought forward. Should numerous cases be brought against the state the Office of the Attorney General may

require an additional Assistant Attorney General 2. The current salary of such a position is \$88,505.

OLR Bill Analysis**SB 1148*****AN ACT ESTABLISHING A CIVIL ACTION WITH RESPECT TO
CRIMINAL RECORDS USED IN EMPLOYMENT DECISIONS.*****SUMMARY:**

This bill explicitly 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 does the following, or aids in such violations:

1. requires the employee or prospective employee to disclose an arrest, criminal charge, or conviction the records of which have been erased, as specified below;
2. denies the prospective employee a job based solely on an arrest, criminal charge, or conviction the records of which have been erased, 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 the basis of a reason outlined in (2) above (the arrest, charge, or conviction must have occurred before the employee worked for the employer).

The law already prohibits these actions.

Under the bill, the covered erased records pertain to juvenile delinquency or families with service needs; youthful offenders; dismissed or nolleed criminal charges; criminal charges for which a person has been found not guilty; and criminal convictions that have been pardoned.

The bill also specifies that the existing prohibition on an employer or its agent, representative, or designee requiring the disclosure of the existence of erased records only applies when the employer or related party knowingly requires such disclosure.

The bill applies to any person engaged in business who has one or more employees, including the state or its political subdivisions.

EFFECTIVE DATE: October 1, 2011

BACKGROUND

Related Bill

sSB 984, favorably reported by the Labor and Public Employees Committee, prohibits an employer, or an employer's agent, representative, or designee from requiring a prospective employee to disclose his or her criminal history or submit to a criminal background check, if the prospective employee has provided at least one calendar year of service as a temporary employee to the employer. It does not apply to positions that require a criminal background check by law.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 23 Nay 18 (04/06/2011)