



House of Representatives

General Assembly

File No. 379

January Session, 2015

Substitute House Bill No. 6875

House of Representatives, April 1, 2015

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CRIMINAL RECORDS AND EMPLOYMENT APPLICATIONS.

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 Section 31-51i of the general statutes is repealed and the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, 2015*):

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 employer's agent, representative or designee
7 may require an employee or prospective employee to disclose the
8 existence of (1) 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 or (2) any arrest, criminal charge or conviction for a nonviolent
11 misdemeanor if five years have elapsed from the date of such arrest,
12 criminal charge or conviction.

13 (c) An employment application form that contains any question
14 concerning the criminal history of the applicant shall contain a notice,
15 in clear and conspicuous language: (1) That the applicant is not
16 required to disclose the existence of (A) any arrest, criminal charge or
17 conviction, the records of which have been erased pursuant to section
18 46b-146, 54-76o or 54-142a, or (B) any arrest, criminal charge or
19 conviction for a nonviolent misdemeanor if five years have elapsed
20 from the date of such arrest, criminal charge or conviction, (2) that
21 criminal records subject to erasure pursuant to section 46b-146, 54-76o
22 or 54-142a are records pertaining to a finding of delinquency or that a
23 child was a member of a family with service needs, an adjudication as
24 a youthful offender, a criminal charge that has been dismissed or
25 nolle, a criminal charge for which the person has been found not
26 guilty or a conviction for which the person received an absolute
27 pardon, and (3) that any person whose criminal records have been
28 erased pursuant to section 46b-146, 54-76o or 54-142a shall be deemed
29 to have never been arrested within the meaning of the general statutes
30 with respect to the proceedings so erased and may so swear under
31 oath.

32 (d) No employer or employer's agent, representative or designee
33 shall deny employment to a prospective employee solely on the basis
34 that the prospective employee had (1) a prior arrest, criminal charge or
35 conviction, the records of which have been erased pursuant to section
36 46b-146, 54-76o or 54-142a, (2) a prior arrest, criminal charge or
37 conviction for a nonviolent misdemeanor if five years have elapsed
38 from the date of such arrest, criminal charge or conviction, or [that the
39 prospective employee had] (3) a prior conviction for which the
40 prospective employee has received a provisional pardon or certificate
41 of rehabilitation pursuant to section 54-130a, or a certificate of
42 rehabilitation pursuant to section 54-108f.

43 (e) No employer or employer's agent, representative or designee
44 shall discharge, or cause to be discharged, or in any manner
45 discriminate against, any employee solely on the basis that the
46 employee had, prior to being employed by such employer, (1) an

47 arrest, criminal charge or conviction, the records of which have been
48 erased pursuant to section 46b-146, 54-76o or 54-142a, (2) an arrest,
49 criminal charge or conviction for a nonviolent misdemeanor if five
50 years have elapsed from the date of such arrest, criminal charge or
51 conviction, or [that the employee had, prior to being employed by such
52 employer,] (3) a prior conviction for which the employee has received
53 a provisional pardon or certificate of rehabilitation pursuant to section
54 54-130a, or a certificate of rehabilitation pursuant to section 54-108f.

55 (f) The portion of an employment application form which contains
56 information concerning the criminal history record of an applicant or
57 employee shall only be available to the members of the personnel
58 department of the company, firm or corporation or, if the company,
59 firm or corporation does not have a personnel department, the person
60 in charge of employment, and to any employee or member of the
61 company, firm or corporation, or an agent of such employee or
62 member, involved in the interviewing of the applicant.

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

68 (1) A broker-dealer or investment adviser registered under chapter
69 672a in connection with (A) the possible or actual filing of, or the
70 collection or retention of information contained in, a form U-4 Uniform
71 Application for Securities Industry Registration or Transfer, (B) the
72 compliance responsibilities of such broker-dealer or investment
73 adviser under state or federal law, or (C) the applicable rules of self-
74 regulatory organizations promulgated in accordance with federal law;

75 (2) An insured depository institution in connection with (A) the
76 management of risks related to safety and soundness, security or
77 privacy of such institution, (B) any waiver that may possibly or
78 actually be sought by such institution pursuant to section 19 of the
79 Federal Deposit Insurance Act, 12 USC 1829(a), (C) the possible or

80 actual obtaining by such institution of any security or fidelity bond, or
81 (D) the compliance responsibilities of such institution under state or
82 federal law; and

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

87 (h) (1) For the purposes of this subsection: (A) "Consumer reporting
88 agency" means any person who regularly engages, in whole or in part,
89 in the practice of assembling or preparing consumer reports for a fee,
90 which reports compile and report items of information on consumers
91 that are matters of public record and are likely to have an adverse
92 effect on a consumer's ability to obtain employment, but does not
93 include any public agency; (B) "consumer report" means any written,
94 oral or other communication of information bearing on an individual's
95 credit worthiness, credit standing, credit capacity, character, general
96 reputation, personal characteristics or mode of living; and (C)
97 "criminal matters of public record" means information obtained from
98 the Judicial Department relating to arrests, indictments, convictions,
99 outstanding judgments, and any other conviction information, as
100 defined in section 54-142g.

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

105 (A) At the time the consumer reporting agency issues such
106 consumer report to a person other than the consumer who is the
107 subject of the report, provide the consumer who is the subject of the
108 consumer report (i) notice that the consumer reporting agency is
109 reporting criminal matters of public record, and (ii) the name and
110 address of the person to whom such consumer report is being issued;

111 (B) Maintain procedures designed to ensure that any criminal

112 matter of public record reported is complete and up-to-date as of the
 113 date the consumer report is issued, which procedures shall, at a
 114 minimum, conform to the requirements set forth in section 54-142e.

115 (3) This subsection shall not apply in the case of an agency or
 116 department of the United States government seeking to obtain and use
 117 a consumer report for employment purposes if the head of the agency
 118 or department makes a written finding pursuant to 15 USC
 119 1681b(b)(4)(A).

120 (i) No employer or an employer's agent, representative or designee
 121 may require any employee or prospective employee to (1) complete an
 122 employment application form that contains any question concerning
 123 the criminal history of the applicant, or (2) disclose the existence of any
 124 arrest, criminal charge or conviction (A) the records of which have not
 125 been erased, or (B) for a nonviolent misdemeanor where such arrest,
 126 criminal charge or conviction occurred less than five years ago, until
 127 such time as such employer, agent, representative or designee has
 128 determined that the applicant is otherwise qualified for the position.

129 (j) Any person aggrieved by a violation of this section may bring a
 130 civil action in the Superior Court to recover damages, together with
 131 costs and a reasonable attorney's fee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2015	31-51i

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Statement of Legislative Commissioners:

In Subsection (i), new subdivisions (1) and (2) were added, previous subdivisions (1) and (2) were changed to subparagraphs (A) and (B), and technical changes were made for clarity.

LAB *Joint Favorable Subst. -LCO*

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 16 \$	FY 17 \$
Labor Dept.	GF - Potential Revenue Gain	Less than 5,000	Less than 5,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill expands existing restrictions on what an employer and its agents, representatives, or designees can require an employee or job applicant to disclose regarding his or her criminal history. To the extent this results in additional violations, there is a potential General Fund revenue gain estimated to be less than \$5,000 beginning in FY 16.¹

The Out Years

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

¹ The civil penalty is \$300 per violation.

OLR Bill Analysis

HB 6875

AN ACT CONCERNING CRIMINAL RECORDS AND EMPLOYMENT APPLICATIONS.

SUMMARY:

This bill expands current restrictions on what an employer and its agents, representatives, or designees (i.e., employers) can require an employee or job applicant to disclose about his or her criminal history. It prohibits employers from requiring a job applicant in the initial stage of the hiring process to (1) complete a job application with any questions about the applicant's criminal history or (2) disclose any arrest, criminal charge, or conviction that (a) has records that have not been erased or (b) was for a nonviolent misdemeanor that occurred in the past five years. The employer can take these actions once it determines that the applicant is otherwise qualified for the position.

The bill also provides protections for employees and applicants who have an arrest, criminal charge, or conviction for a nonviolent misdemeanor more than five years old. It prohibits employers, at any time, from:

1. requiring an employee or job applicant to disclose such a history,
2. denying an applicant employment based solely on such a history, or
3. discharging or discriminating against an employee based solely on such a history.

Additionally, the bill requires job applications to contain a statement that an applicant is not required to disclose any arrest, criminal charge, or conviction for a nonviolent misdemeanor more than five years old.

The bill subjects violators of its provisions to a \$300 civil penalty imposed by the Department of Labor (DOL) and allows a person aggrieved by a violation of its prohibitions to bring a civil action in Superior Court for damages, costs, and attorney's fees. It also allows a person to bring a civil action if he or she is aggrieved by a violation of existing law on employment-related criminal record checks. Under existing law such violations are subject to a DOL \$300 civil penalty.

EFFECTIVE DATE: October 1, 2015

CIVIL ACTIONS FOR EMPLOYMENT-RELATED CRIMINAL RECORDS CHECKS

The bill allows people aggrieved by a violation of its prohibitions, or related violations of existing law, to bring a civil action in Superior Court for damages, costs, and attorney's fees. Existing law protects employees and applicants who have (1) an arrest, criminal charge, or conviction with records that have been erased under certain conditions or (2) a prior conviction for which the employee or applicant received a provisional pardon or certificate of rehabilitation. The law requires employers to include a notice on job applications that states that an applicant is not required to disclose these matters and prohibits employers from:

1. requiring an employee or job applicant to disclose these matters,
2. denying employment to an applicant based solely on these matters, or
3. discharging or discriminating against an employee based solely on these matters.

The bill allows employees and applicants aggrieved by a violation of these existing requirements and prohibitions to bring a civil action. It also allows a civil action for the following violations of existing law:

1. failing to comply with requirements related to the confidentiality of a job application's criminal history section, and

2. for a consumer reporting agency doing a background check, failing to (a) notify the subject employee or applicant that it is reporting criminal matters of public record, (b) provide the subject employee or applicant with the name and address of the person to whom the background check is being provided, and (c) maintain procedures designed to ensure that its reporting on criminal records is complete and up-to-date as required by law.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 13 Nay 0 (03/12/2015)