



# House of Representatives

General Assembly

**File No. 175**

February Session, 2016

Substitute House Bill No. 5237

*House of Representatives, March 24, 2016*

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 FAIR CHANCE EMPLOYMENT.***

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 Section 31-51i of the general statutes is repealed and the  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, 2016*):

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 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 and is permissible  
12 pursuant to subsection (i) or subsection (l) of this section shall contain

13 a notice, in clear and conspicuous language: (1) That the applicant is  
14 not 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] Except for a position for which any provision of the general  
28 statutes specifically disqualifies a person from employment by an  
29 employer because of a prior conviction for a crime, no employer or  
30 employer's agent, representative or designee shall deny employment  
31 to a prospective employee solely on the basis that the prospective  
32 employee had (1) a prior arrest, criminal charge or conviction, the  
33 records of which have been erased pursuant to section 46b-146, 54-76o  
34 or 54-142a, (2) a prior conviction for a misdemeanor if five years have  
35 elapsed from the prospective employee's date of release from the  
36 custody of the Commissioner of Correction, (3) a prior conviction for a  
37 felony if ten years have elapsed from the prospective employee's date  
38 of release from the custody of the Commissioner of Correction, or [that  
39 the prospective employee had] (4) 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] Except for a position for which any provision of the general  
44 statutes specifically disqualifies a person from employment by an  
45 employer because of a prior conviction for a crime, no employer or  
46 employer's agent, representative or designee shall discharge, or cause

47 to be discharged, or in any manner discriminate against, any employee  
48 solely on the basis that the employee had, prior to being employed by  
49 such employer, (1) an arrest, criminal charge or conviction, the records  
50 of which have been erased pursuant to section 46b-146, 54-76o or 54-  
51 142a, (2) a prior conviction for a misdemeanor if five years have  
52 elapsed from the employee's date of release from the custody of the  
53 Commissioner of Correction, (3) a prior conviction for a felony if ten  
54 years have elapsed from the employee's date of release from the  
55 custody of the Commissioner of Correction, or [that the employee had,  
56 prior to being employed by such employer,] (4) a prior conviction for  
57 which the employee has received a provisional pardon or certificate of  
58 rehabilitation pursuant to section 54-130a, or a certificate of  
59 rehabilitation pursuant to section 54-108f.

60 (f) [The] Any portion of an employment application form [which]  
61 that contains information concerning the criminal history record of an  
62 applicant or employee and is permissible pursuant to subsection (i) or  
63 subsection (l) of this section shall only be available to the members of  
64 the personnel department of the company, firm or corporation or, if  
65 the company, firm or corporation does not have a personnel  
66 department, the person in charge of employment, and to any employee  
67 or member of the company, firm or corporation, or an agent of such  
68 employee or member, involved in the interviewing of the applicant.

69 (g) Notwithstanding the provisions of subsection (f) of this section,  
70 [the] any portion of an employment application form [which] that  
71 contains information concerning the criminal history record of an  
72 applicant or employee and is permissible pursuant to subsection (i) or  
73 subsection (l) of this section may be made available as necessary to  
74 persons other than those specified in said subsection (f) by:

75 (1) A broker-dealer or investment adviser registered under chapter  
76 672a in connection with (A) the possible or actual filing of, or the  
77 collection or retention of information contained in, a form U-4 Uniform  
78 Application for Securities Industry Registration or Transfer, (B) the  
79 compliance responsibilities of such broker-dealer or investment

80 adviser under state or federal law, or (C) the applicable rules of self-  
81 regulatory organizations promulgated in accordance with federal law;

82 (2) An insured depository institution in connection with (A) the  
83 management of risks related to safety and soundness, security or  
84 privacy of such institution, (B) any waiver that may possibly or  
85 actually be sought by such institution pursuant to section 19 of the  
86 Federal Deposit Insurance Act, 12 USC 1829(a), (C) the possible or  
87 actual obtaining by such institution of any security or fidelity bond, or  
88 (D) the compliance responsibilities of such institution under state or  
89 federal law; and

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

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

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

112 (A) At the time the consumer reporting agency issues such  
113 consumer report to a person other than the consumer who is the  
114 subject of the report, provide the consumer who is the subject of the  
115 consumer report (i) notice that the consumer reporting agency is  
116 reporting criminal matters of public record, and (ii) the name and  
117 address of the person to whom such consumer report is being issued;

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

122 (3) This subsection shall not apply in the case of an agency or  
123 department of the United States government seeking to obtain and use  
124 a consumer report for employment purposes if the head of the agency  
125 or department makes a written finding pursuant to 15 USC  
126 1681b(b)(4)(A).

127 (i) (1) Except as otherwise provided in subdivision (2) of this  
128 subsection, no employer or employer's agent, representative or  
129 designee may require any employee or prospective employee to  
130 complete an employment application form that contains any question  
131 concerning the criminal history of the applicant until such time as such  
132 employer, agent, representative or designee has made a conditional  
133 offer of employment to such applicant. For purposes of this subsection,  
134 a "conditional offer of employment" means an employer's offer of  
135 employment that is contingent upon an employee's or prospective  
136 employee's successful completion of an employer's application process  
137 which may include, but need not be limited to, drug testing, a criminal  
138 history records check or the production of valid licensure necessary for  
139 such employment.

140 (2) Notwithstanding the provisions of subdivision (1) of this  
141 subsection, an employer may require (A) any current or prospective  
142 correction officer, (B) any current or prospective judicial marshal, state  
143 marshal, juvenile or adult probation officer, juvenile detention officer  
144 or investigator employed by or seeking employment with the Division

145 of Criminal Justice, (C) any member or prospective member of (i) a  
 146 state or municipal police force, (ii) the police force for the constituent  
 147 units of the state system of higher education or the independent  
 148 institutions of higher education in this state, (iii) the police force of  
 149 Bradley International Airport, or (iv) the Office of the State Capitol  
 150 Police, or (D) any employee or prospective employee of (i) a broker-  
 151 dealer or investment adviser registered under chapter 672a, (ii) an  
 152 insured depository institution, or (iii) an insurance producer licensed  
 153 under chapter 701a, as described in subdivisions (1) to (3), inclusive, of  
 154 subsection (g) of this section, to complete an employment application  
 155 form that contains questions concerning the applicant's criminal  
 156 history.

157 (j) Any employee or prospective employee may file a complaint  
 158 with the Labor Commissioner alleging violations of subsection (i) of  
 159 this section. Upon receipt of the complaint, the commissioner shall  
 160 investigate such complaint and may hold a hearing. After the hearing,  
 161 the commissioner shall send each party a written copy of the  
 162 commissioner's decision. Any employee or prospective employee who  
 163 prevails in such hearing shall be awarded reasonable attorney's fees  
 164 and costs.

165 (k) Any party aggrieved by the decision of the commissioner may  
 166 appeal the decision to the Superior Court in accordance with the  
 167 provisions of chapter 54.

168 (l) Notwithstanding the provisions of subsections (b) to (i),  
 169 inclusive, of this section an employer may require an employee or  
 170 prospective employee to disclose the existence of any arrest, criminal  
 171 charge or conviction if such disclosure is required under any  
 172 applicable state or federal law.

|   |                 |        |
|---|-----------------|--------|
| This act shall take effect as follows and shall amend the following sections: |                 |        |
| Section 1   | October 1, 2016 | 31-51i |

**LAB**      *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:**

| <b>Agency Affected</b>                           | <b>Fund-Effect</b> | <b>FY 17 \$</b>   | <b>FY 18 \$</b>   |
|--|--------------------|-------------------|-------------------|
| Labor Dept.                                      | GF - Cost          | 47,457            | 94,913            |
| State Comptroller - Fringe Benefits <sup>1</sup> | GF - Cost          | 18,954            | 37,908            |
| Various State Agencies                           | All Funds - Cost   | Potential Minimal | Potential Minimal |

Note: All Funds=All Funds; GF=General Fund

**Municipal Impact:**

| <b>Municipalities</b>  | <b>Effect</b> | <b>FY 17 \$</b>   | <b>FY 18 \$</b>   |
|------------------------|---------------|-------------------|-------------------|
| Various Municipalities | Cost          | Potential Minimal | Potential Minimal |

**Explanation**

The bill provides employment protections for certain employees and job applicants with criminal conviction records. This results in: (1) a General Fund cost of \$66,411 in FY 17 (partial year) and \$132,821 in FY 18, and (2) a potential minimal cost to various state agencies and municipalities.

The bill prohibits criminal history questions in the job application process and requires private employers to follow the same rules as public employers when asking about criminal history. Employers can ask these questions after a conditional offer of employment is made. There may be a minimal printing cost to those agencies that would have to alter their job applications to adhere to the terms of the bill.

---

<sup>1</sup>The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 39.94% of payroll in FY 17 and FY 18.

The bill allows aggrieved employees and applicants to file a complaint with the labor commissioner, who must investigate the complaint and may hold a hearing. Based on the number of complaints for a similar provision for state employees heard annually by the Commission on Human Rights and Opportunities, it is anticipated that the number of investigations and hearings will require additional resources within the Department of Labor (DOL). Specifically, the DOL would require one part-time Wage Enforcement Agent (\$41,875 for salary and \$16,275 for fringe costs) and one part-time Staff Attorney (\$53,038 for salary and \$21,183 for fringe costs) to investigate, hold hearings, render decisions and write reports.

There is no impact to the Judicial Department from allowing appeals in Superior Court. The number of appeals is not anticipated to be great enough to need additional resources. The court system disposes of over 500,000 cases annually.

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

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

**OLR Bill Analysis****sHB 5237*****AN ACT CONCERNING FAIR CHANCE EMPLOYMENT.*****SUMMARY:**

This bill provides employment protections for certain employees and job applicants with criminal conviction records. It generally prohibits employers (including their agents, representatives, and designees) from denying employment to a job applicant, or discharging or discriminating against a current employee, solely because he or she was convicted of a (1) misdemeanor, if it has been at least five years since he or she was released from the correction commissioner's custody or (2) felony, if it has been at least 10 years since he or she was released from the commissioner's custody. (It is unclear, but it appears that these protections would not extend to those who were convicted but never imprisoned.) The prohibitions do not apply to positions for which state law specifically disqualifies someone because of a prior criminal conviction.

The bill also generally prohibits employers from requiring an employee or prospective employee to complete a job application with questions about their criminal history until the employer makes a "conditional offer of employment." Under the bill, this is an employment offer that requires an applicant to successfully complete the employer's application process, which can include drug testing, criminal history records checks, or verifying the validity of any necessary licenses. The bill allows exceptions on applications for numerous positions specified in the bill. It also allows employers to require the disclosure of any arrest, criminal charge, or conviction, including those that have been erased, if it is required under any applicable state or federal law.

Under the bill, applicants and employees can file complaints about violations of the bill's job application provisions with the labor commissioner.

EFFECTIVE DATE: October 1, 2016

### **JOB PROTECTIONS & EXCEPTIONS**

Current law prohibits employers from denying employment to a job applicant, or discharging or discriminating against a current employee, solely because he or she (1) has criminal records that were erased under certain circumstances or (2) a prior conviction for which he or she received a pardon or certificate of rehabilitation under certain circumstances. The bill extends this prohibition to include applicants and employees convicted of a (1) misdemeanor, if it has been at least five years since he or she was released from the correction commissioner's custody or (2) felony, if it has been at least 10 years since he or she was released from the commissioner's custody. It also allows exceptions to all of these prohibitions, including those in current law, if state law specifically disqualifies someone because of a prior criminal conviction.

### **EXCEPTIONS FOR APPLICATIONS**

The bill allows employers to include questions about an applicant's criminal history on applications for the following positions:

1. correction officer;
2. the Division of Criminal Justice's judicial or state marshals, juvenile or adult probation officers, juvenile detention officers, and investigators;
3. state or municipal police;
4. police forces for the (a) constituent units of the state higher education system or the independent higher education institutions in the state, (b) Bradley International Airport police, and (c) Capitol police; and

- 5. employees of certain registered broker-dealers, investment advisers, insured depository institutions, or licensed insurance producers that the law allows to see an employee’s criminal history record.

**ENFORCEMENT**

The bill allows employees and applicants to file a complaint with the labor commissioner alleging that an employer required them to prematurely complete a job application with questions about their criminal history. Upon receiving the complaint, the commissioner must investigate and may hold a hearing. After the hearing, he must send each party a written copy of his decision and award reasonable attorney’s fees to a prevailing employee or applicant. Any party aggrieved by the commissioner’s decision may appeal to Superior Court.

By law, violators of either of the bill’s provisions would also be subject to a \$300 per violation civil penalty imposed by the Department of Labor (CGS § 31-69a).

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute  
Yea 13    Nay 0    (03/10/2016)