
OLR Bill Analysis

sHB 6921

AN ACT CONCERNING DISCRIMINATION BASED ON A PERSON'S CRIMINAL HISTORY.

SUMMARY

This bill prohibits discrimination based on “criminal matters of public record” (i.e., someone’s criminal history) in certain contexts. It does so by expanding the anti-discrimination provisions of various state laws to also prohibit discrimination due to such matters. Under the bill, “criminal matters of public record” is information obtained from the judicial department relating to arrests, indictments, convictions, outstanding judgments, and any other criminal history records that have not been erased, including “no contest” or guilty pleas.

More specifically, the bill prohibits discrimination based on someone’s criminal history in employment, public accommodations, the sale or rental of housing, the granting of credit, and other laws over which the Commission on Human Rights and Opportunities (CHRO) has jurisdiction. By law, anyone aggrieved by one of these alleged discriminatory practices may file a discrimination complaint with CHRO, which investigates and enforces anti-discrimination laws in these areas.

The bill also prohibits discrimination based on someone’s criminal history in several laws related to state employees, agencies, and the services they provide, which also fall under CHRO’s jurisdiction. (It appears that several of these requirements conflict with existing laws, unchanged by the bill, which allow, and sometimes require, people with criminal histories to be precluded from state employment, licensing, and permitting under certain circumstances, see COMMENT.)

The bill also prohibits discrimination based on someone's criminal history in various other contexts beyond the scope of CHRO's jurisdiction, including, among other things, in housing financed by the Connecticut Housing Finance Authority or under the Municipal Housing Finance Assistance Act, the provision of certain utility services, and issuing auto insurance policies.

EFFECTIVE DATE: October 1, 2019

DISCRIMINATION UNDER CHRO JURISDICTION

Employment (§ 2)

The bill prohibits an employer, except in the case of a bona fide occupational qualification or need, from taking the following actions based on a person's criminal history:

1. refusing to hire or employ the person;
2. barring or discharging the person from employment; or
3. discriminating against the person in pay or employment terms, conditions, or privileges.

These prohibitions apply to any employer, public or private, that employs three or more people. It applies to all employees except those employed by their parents, spouse, or children.

(Numerous state laws require prospective employees to undergo criminal background checks (e.g., certain child care workers (CGS § 19a-80)), and some explicitly prohibit people with certain criminal histories from holding certain positions (e.g. teachers (CGS § 10-145i)); but the extent to which a person's criminal history may affect a "bona fide occupational qualification or need" is unclear and may need to be determined by CHRO on a case-by-case basis.)

The bill also prohibits the following kinds of employment discrimination based on a person's criminal history:

1. employment agencies failing or refusing to properly classify or refer the person for employment or otherwise discriminating

against the person, unless there is a bona fide occupational qualification or need;

2. labor organizations excluding the person from full membership rights, expelling the person, or discriminating in any way against a member, employer, or employee, unless it is due to a bona fide occupational qualification;
3. employers, employment agencies, labor organizations, or anyone else advertising employment opportunities in a way that restricts employment and thus discriminates, except for a bona fide occupational qualification or need;
4. employers, employment agencies, labor organizations, or anyone else taking adverse action against someone because he or she opposed a discriminatory employment practice, brought a complaint, or testified or assisted someone else in a complaint; and
5. anyone aiding, abetting, inciting, compelling, or coercing someone to commit a discriminatory employment practice or attempting to do so.

Associations of Licensed People (§ 18)

The bill makes it a discriminatory practice for any professional or trade association, board, or other organization whose profession, trade, or occupation requires a state license, to refuse to accept someone as a member because of his or her criminal history. By law, violators are subject to a \$100 - \$500 fine.

Public Accommodations (§ 19)

The bill prohibits anyone from denying someone, on the basis of their criminal record, full and equal accommodations in any public establishment (i.e., one that caters to or offers its services, facilities, or goods to the general public), including any commercial property or building lot on which a commercial building will be built or offered for sale or rent, subject to lawful conditions and limitations that apply alike to everyone. It further prohibits discriminating, segregating, or

separating people on the basis of their criminal record. By law, violations are a Class D misdemeanor (CGS § 46a-64(c)).

Housing (§§ 20-21)

The bill prohibits the following kinds of housing discrimination based on a person's criminal history:

1. refusing to sell or rent after a person makes a bona fide offer, or refusing to negotiate for the sale or rental of a dwelling, or otherwise denying or making a dwelling unavailable;
2. discriminating in the terms, conditions, or privileges of a dwelling's sale or rental, or in the provision of services or facilities in connection with the sale or rental;
3. making, printing, or publishing any notice, statement, or advertisement (or causing any of these to be done) about a dwelling's sale or rental that indicates a preference, limitation, or discrimination, or an intention to make such a preference, limitation, or discrimination;
4. falsely representing to someone that a dwelling is not available for inspection, sale, or rental, a practice commonly known as "steering;"
5. for profit, inducing or attempting to induce someone to sell or rent a dwelling by representing that people with a criminal history are moving, or may move, into the neighborhood;
6. any person or entity engaging in residential real estate transactions discriminating in making a transaction available or in the transactions' terms or conditions;
7. denying someone access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminating in the terms or conditions of such access, membership, or participation; and

8. coercing, intimidating, threatening, or interfering with someone in the exercise or enjoyment of, or on account of the person having exercised, enjoyed, or aided or encouraged someone else in the exercise or enjoyment of, these rights.

By law, violations are a class D misdemeanor (CGS § 46a-64c(g)).

Under existing law, unchanged by the bill, prohibitions on housing discrimination do not apply to (1) renting a room or rooms in a single-family home in which the owner lives or (2) a unit in a two-family home in which the owner lives (CGS § 46a-64c(b)).

The act also makes a conforming change by specifying that it does not prohibit a property appraiser from considering factors other than someone's criminal history or other specified impermissible factors.

Credit (§ 22)

The bill prohibits a creditor from discriminating against an adult in a credit transaction on the basis of his or her criminal history.

State Agencies (§§ 23-28)

The bill expands several CHRO anti-discrimination provisions for state agencies, employees, and services to cover discrimination based on a person's criminal history. More specifically, it:

1. requires state officials and supervisory personnel to recruit, appoint, assign, train, evaluate, and promote state personnel on the basis of merit and qualifications, without regard to their criminal histories (§ 23) (it appears that this requirement conflicts with existing laws that require applicants for certain state positions to undergo criminal history checks and allows them to be precluded from state employment under certain circumstances; see COMMENT);
2. requires state agency services to be performed without discrimination based on criminal histories (§ 24);
3. prohibits state departments, boards, or agencies from granting,

denying, or revoking a person's license or charter on the grounds of his or her criminal history (§ 26) (it appears that this requirement and the requirement above (§ 24) conflict with existing laws which require applicants for certain state licenses and permits to undergo criminal history checks and explicitly prohibit people with criminal histories from holding certain licenses and permits; see COMMENT);

4. requires any state agency that provides employment referrals or placement services to public or private employers to reject any job request that indicates an intention to exclude anyone based on his or her criminal history (§ 25);
5. requires all educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state agencies, or in which state agencies participate, to be open to all qualified persons, without regard to their criminal histories (§ 27); and
6. prohibits someone's criminal history from being considered as a limiting factor in state-administered programs involving the distribution of funds to qualify applicants for benefits authorized by law, and prohibits the state from giving financial assistance to public agencies, private institutions, or other organizations that discriminate on this basis (§ 28).

DISCRIMINATION IN OTHER CONTEXTS

The bill also prohibits discrimination based on someone's criminal history in other contexts beyond the scope of CHRO's jurisdiction.

Urban Homesteading Program (§ 3)

Under the Urban Homesteading Program, a municipality may create an urban homesteading agency to turn vacant and abandoned buildings into owner-occupied homes. These agencies may acquire such properties and transfer them to people willing to rehabilitate and reside in them. The bill requires the contract for the transfer to provide that in the sale or rental of the property, no one will be discriminated

against due to his or her criminal history.

Connecticut Housing Finance Authority (§ 4)

The bill requires the Connecticut Housing Finance Authority (CHFA) to require that the occupancy of all housing it finances or otherwise assists be open to all people regardless of their criminal histories. It also requires the contractors and subcontractors who build or rehabilitate such housing to take affirmative action to provide equal employment opportunity without discriminating as to criminal histories. (These requirements may conflict with certain requirements under federal law, see COMMENT.)

Rehabilitation of Abandoned Industrial and Commercial Buildings (§ 5)

Under the Rehabilitation of Abandoned Industrial and Commercial Buildings Program, municipalities may acquire and transfer blighted commercial and industrial property to entities that agree to rehabilitate it. The bill requires the contract for the transfer to provide that in the sale or rental of the property, no one will be discriminated against due to their criminal history.

Municipal Housing Finance Assistance (§ 6)

The bill requires municipalities to take all necessary steps to ensure that the occupancy of all housing financed or assisted under the Municipal Housing Finance Assistance Act is open to all people, regardless of their criminal history. (These requirements may conflict with certain requirements under federal law, see COMMENT.)

State Higher Education System Policies (§ 7)

The bill requires the state higher education system's policies to have the goal of ensuring that no qualified person is denied the opportunity for higher education due to his or her criminal history.

Public Libraries (§ 8)

The bill requires principal public libraries, to be eligible for certain state grants, to not discriminate on the basis of someone's criminal history. By law, a local municipal governing board may make one

public library in the municipality eligible for certain state grants by designating it as its principal public library.

Utilities (§§ 9 & 10)

The bill prohibits retail electric suppliers, telephone companies, and certified telecommunications providers from refusing to provide services, or negotiate to provide services, to someone because of his or her criminal history.

Emergency Management (§ 11)

The bill prohibits anyone from discriminating on the basis of someone's criminal history when carrying out (1) the provisions of the civil preparedness, emergency management, and homeland security law or (2) any federal major disaster or emergency function in the state.

Apprenticeship Standards (§ 12)

The bill requires the labor commissioner's work training standards for apprentices to provide equal opportunities for all without regard to criminal history.

Indian Tribes' Employment Rights Code (§ 13)

The bill requires the Indian tribes' Employment Rights Code to provide that a commercial enterprise subject to tribal jurisdiction must not, except in the case of a bona fide occupational qualification or need, refuse to hire, bar, discharge, or discriminate against anyone in compensation or other employment terms, due to their criminal history. By law, the tribes must adopt such a code in order to receive certain state services or funds.

Regional Corporations (§ 14)

The bill requires applicants for financial assistance from a regional corporation to certify that they will not discriminate against any employee or job applicant because of his or her criminal history. In general, a regional corporation provides financial assistance to businesses for projects that demonstrate a substantial likelihood of providing increases in net new permanent jobs or retaining jobs in

businesses that need such assistance to remain viable.

Auto Insurance (§ 15)

The bill prohibits auto insurance companies from declining, canceling, or refusing to renew auto insurance policies solely on the basis of someone’s criminal history, unless the company is part of an insurer group and another group member would not decline a similar application on this basis.

Discriminatory Boycotts (§§ 16 & 17)

The bill extends the state policy to oppose unauthorized discriminatory boycotts that are fostered or imposed by foreign persons, foreign governments, or international organizations, to include any such boycott against a domestic individual on the basis of his or her criminal history.

Under the bill, “participating in a discriminatory boycott” includes entering into or performing an agreement, or contractual arrangement for economic benefit by a person with a foreign government, foreign person, or international organization, not specifically authorized by federal law, in order to restrict, condition, prohibit, or interfere with any business relationship in Connecticut on the basis of a domestic individual's criminal history.

For these purposes, domestic individuals include people and businesses whose residence, domicile, or principal place of business is in Connecticut or who do business in Connecticut.

COMMENT

Conflicting State and Federal Laws

Several of the bill’s provisions banning discrimination against someone due to his or her criminal history may conflict with existing state or federal laws. It is unclear how these provisions would interact with the existing laws.

State Employment. Numerous state laws, unchanged by the bill, require applicants for certain state employee positions to undergo

criminal history checks (e.g., positions in the departments of Children and Families (CGS § 17a-6a), Correction (CGS § 18-811), and Public Health (CGS § 19a-40a)). The law also allows the state and its agencies to deny someone state employment after considering (1) the nature of the crime and its relationship to the job, (2) information pertaining to the degree of the person's rehabilitation, and (3) how much time has passed since the person's conviction or release (CGS § 46a-80).

State Occupational Licenses and Permits. Numerous state laws, unchanged by the bill, require applicants for certain state licenses, permits, and registrations to undergo criminal history checks (e.g., nursing home licenses (CGS § 19a-491b), school bus driver licenses (CGS § 14-44), security officer licenses (CGS § 29-161q)). In addition, other laws explicitly prohibit state agencies from issuing specified documents to people with certain criminal convictions (e.g., certain gun permits (CGS § 29-28), security officer trainers (CGS § 29-161q)).

Existing law allows the state and its agencies to deny someone a license, permit, certificate or registration to practice an occupation, trade, profession or business, after considering (1) the nature of the crime and its relationship to the job, (2) information pertaining to the degree of the person's rehabilitation, and (3) how much time has passed since the person's conviction or release (CGS § 46a-80).

Housing. Federal law and regulations generally prohibit entities responsible for administering federally assisted housing programs, such as CHFA, from serving individuals listed on a state or federal sex offender registry and may additionally prohibit individuals with certain criminal histories from participating in certain programs (e.g., see 24 C.F.R. § 553).

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/21/2019)