

---

---

## **OLR Bill Analysis**

**sHB 6474**

### ***AN ACT CONCERNING COLLATERAL EMPLOYMENT CONSEQUENCES OF A CRIMINAL RECORD.***

#### **SUMMARY**

This bill generally makes it a discriminatory practice for employers with at least three employees to deny employment to someone solely because of their “criminal history record information” (i.e., criminal records). It similarly makes it a discriminatory practice for state licensing agencies to deny an occupational license, permit, certificate, or registration to someone solely because of their criminal records. By law, someone aggrieved by a discriminatory practice may file a discrimination complaint with the Commission on Human Rights and Opportunities, which investigates and enforces anti-discrimination laws.

However, the bill allows employers and licensing agencies to deny employment or a license if an individualized assessment shows that the denial is consistent with business necessity because (1) there is a substantial nexus between the circumstances of the person’s criminal records and prospective employment or license; (2) there is substantial evidence that the person has not been rehabilitated; and (3) insufficient time has passed since the acts underlying the criminal records.

The bill also exempts certain positions, such as those in law enforcement agencies and those for which a law specifically disqualifies someone because of a prior criminal conviction. And it allows a law that requires an employer to discriminate based on criminal records to be a defense to a discriminatory practice claim.

The bill also makes it a discriminatory practice for any professional or trade association, board, or other organization representing a profession, trade, or occupation that requires a state license to refuse to

accept someone as a member because of his or her criminal records.

The bill limits the circumstances under which various occupational licensing agencies, boards, and commissions, may take disciplinary action against a practitioner (e.g., by revoking or suspending a license) because the practitioner was found guilty or convicted of a felony. It allows them to do so only when the felony is reasonably related to practitioner's ability to safely or competently perform the duties or responsibilities associated with the license, certificate, permit, registration, or practice.

The bill establishes the 10-member Council on the Elimination of Occupational License Collateral Consequences and requires it to identify state laws that create barriers for someone to obtain an occupational license based on their criminal records. The bill also requires several state agencies to report certain information about their practices and procedures for performing background checks.

It also makes various minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2021, except the provision establishing the Council on the Elimination of Occupational License Collateral Consequences (§ 8) is effective July 1, 2021.

## **§ 2 — DEFINITIONS**

Under the bill, "criminal history record information" includes court records and information obtained from the Judicial Department about (1) arrests, releases, detentions, indictments, and information; (2) other formal criminal charges or any events and outcomes arising from them, including pleas, trials, convictions, sentences, appeals, incarcerations, correctional supervision, paroles and releases, and outstanding judgments; and (3) any other conviction information or any records, documents, and information based on them.

"Occupational license" means any license, permit, certificate, registration, or other means to engage in an occupation, trade, vocation, business, or profession. A "licensing agency" is a board, agency, department, commission, or other state agency authorized to

grant or deny occupational licenses.

“Employers” under the bill are all employers with at least three employees, including the state and its political subdivisions.

## **§§ 3-4 & 6 — DENIALS OF EMPLOYMENT OR OCCUPATIONAL LICENSES**

### ***Denial Solely Because of Criminal Records (§ 3(a))***

Current law generally prohibits the state from disqualifying someone from state employment or from practicing, pursuing, or engaging in an occupation, trade, vocation, profession, or business that requires a state-issued license, permit, certificate, or registration solely because of the person’s prior conviction of a crime.

The bill expands this prohibition to cover all “employers” and the actions taken directly or through their agents. It also broadens the protections to prohibit (1) discrimination in terms, conditions, or privileges of employment and (2) actions taken solely based on the person’s criminal records, rather than only convictions.

**Exceptions.** Under the bill, as under current law, the above prohibitions do not apply to (1) licenses for a mortgage lender, mortgage correspondent lender, or mortgage broker or (2) law enforcement agencies (see below).

### ***Denial by Reason of Criminal Records (§ 3(b)-(c))***

Current law generally allows the state to deny employment or an occupational license to someone by reason of their prior criminal conviction only after considering (1) the nature of the crime and its relationship to the job for which the person applied; (2) information about the extent of the person’s rehabilitation; and (3) how much time has passed since the person’s conviction or release from incarceration.

The bill instead generally prohibits employers and employment agencies from denying employment, and the state and state agencies from denying an occupational license, to someone by reason of their criminal records unless they first conduct an individualized assessment. As under current law, the prohibition does not apply to

positions for which a state law specifically disqualifies someone from employment because of their criminal records for a prior criminal conviction.

**Individualized Assessment.** Under the bill, employment may be denied if, after conducting an individualized assessment, the employer or employment agency determines in good faith that the denial is consistent with business necessity because:

1. there is a substantial nexus between the circumstances of the person's criminal records and prospective employment, considering the specific facts of the criminal records and the job's essential functions and specific circumstances;
2. there is substantial evidence that the person has not been rehabilitated; and
3. insufficient time has passed since the acts underlying the criminal records.

As current law requires for the state, the bill requires that an employer (but not an employment agency), in determining whether the person has been rehabilitated, presume that a provisional pardon or certificate of rehabilitation establishes that the person has been rehabilitated.

**Denials.** Under the bill, if the employer denies the application based in whole or in part on someone's criminal records, it must give the applicant a written statement of its reasons for doing so. Current law requires the state to do this when it denies an application based on a conviction for which the applicant received a provisional pardon or certificate of rehabilitation.

Similar to the current law for the state, if criminal records are used as a basis for rejecting an applicant, the rejection must (1) be in writing, (2) specifically state the evidence presented and reasons for rejection, and (3) be sent to the applicant by registered mail.

The bill also prohibits any state department, board, or agency from

permitting any discriminatory practice that violates the provisions described above (§ 6).

***Denial of Occupational License on the Basis of Criminal Records (§ 4(a))***

Under the bill, an occupational license must not be denied to someone on the basis of their criminal records unless the licensing agency responsible for issuing the license conducts an individualized assessment. (It is unclear how denying a license “on the basis of” criminal records differs from denying one “by reason of” criminal records, as previously described.)

As with the employment provision, the bill allows a licensing agency to deny an occupational license if, after conducting an individualized assessment, the agency determines in good faith that:

1. there is a substantial nexus between the circumstances of the person’s criminal records and the occupational license, considering the specific facts of the criminal records and the license holder’s essential functions;
2. there is substantial evidence that the person has not been rehabilitated; and
3. insufficient time has passed since the acts underlying the criminal records.

In determining whether the person has been rehabilitated, the licensing agency must presume that a provisional pardon or certificate of rehabilitation establishes that the person has been rehabilitated. If the licensing agency denies the application, based in whole or in part on criminal records, it must give the applicant a written statement of its reasons for doing so.

***Relation to Other State Laws.*** Current law provides that the laws that generally prohibit the state from denying employment or an occupational license to someone because of a prior criminal conviction prevail over other laws that govern the (1) denial of occupational

licenses on the grounds of someone's good moral character or (2) suspension or revocation of occupational licenses on the grounds of a criminal conviction. The bill broadens this provision to also cover when these actions are taken on the grounds of someone's criminal records. As under the current law, this does not cover licenses for a mortgage lender, mortgage correspondent lender, or mortgage broker (§ 4).

***Job Ads (§ 3(c))***

The bill generally prohibits employers and employment agencies from advertising employment opportunities in a way that restricts the employment for applicants with criminal records. But it exempts positions for which state law specifically disqualifies someone from employment because of their criminal records.

**§ 4 — LAW ENFORCEMENT EXCEPTION**

Current law exempts law enforcement agencies from the laws that generally prohibit the state from denying employment to someone because of a prior criminal conviction. The bill further specifies that it is not a discriminatory practice for a law enforcement agency to take the following actions against someone based on their criminal records: (1) refuse to hire or employ; (2) bar or discharge from employment; or (3) discriminate in compensation or terms, conditions, or privileges of employment.

As under current law, the bill specifies that it does not preclude law enforcement agencies from adopting the policy set forth in the provisions of the bill described above or in the statutory statement on discrimination based on criminal records (see § 1 below; the bill also references several other statutes and sections of the bill that do not appear to be applicable).

**§ 7 — DEFENSES TO DISCRIMINATION CLAIMS**

Under the bill, to the extent that another governing law, including federal law, requires an employer to discriminate based on criminal records, the other governing law is a defense to a claim of discriminatory practice.

The bill also requires that in a civil action for the death to, injury of, or damage to a third person caused by the intentional act of someone with criminal records, anyone who employs a person with criminal records must be presumed to have been not negligent in entering into transactions mandated by state law's relevant provisions.

## **§§ 9-31 — OCCUPATIONAL LICENSE DISCIPLINARY ACTIONS**

### ***Embalmers and Funeral Directors (§ 9)***

The law generally authorizes the Department of Health (DPH) to deny an occupational permit or license for an applicant who has been found guilty or convicted of a felony (in Connecticut, under federal law, or in any other jurisdiction if it would have been a felony in Connecticut). Under current law, however, DPH cannot do this for barbers, hairdressers, or cosmeticians. The bill broadens this exception to also cover licenses for embalmers and funeral directors.

### ***Immediate Disciplinary Actions (§ 10)***

Current law allows various occupational licensing boards or commissions, and DPH, to take certain actions against a practitioner summarily (immediately) if they receive proof that the practitioner was found guilty or convicted of a felony. These disciplinary actions include summarily revoking or suspending a license or permit, censuring or reprimanding the practitioner, limiting or restricting the practitioner's practice, placing the practitioner on probationary status, and assessing a civil penalty up to \$25,000.

Under the bill, these disciplinary actions cannot be taken summarily against licensed clinical social workers and master social workers, professional counselors, art therapists, dietician-nutritionists, embalmers or funeral directors, barbers, hairdressers, cosmeticians, estheticians, eyelash technicians, or nail technicians who were found guilty or convicted of a felony.

### ***Regular Disciplinary Actions (§§ 11-30)***

Current law also allows the various occupational licensing boards or commissions and state agencies to take certain actions (but not summarily) against a practitioner who was convicted of a felony.

These actions may include the full range of disciplinary actions discussed above or be limited to revoking or suspending the applicable license, permit, or certification. In some instances, they also include denying a license or license renewal.

The bill limits the circumstances under which these actions may be taken by allowing them only when the felony conviction is reasonably related to practitioner's ability to safely or competently perform the duties or responsibilities associated with the license, certificate, permit, registration, or practice (as applicable). Table 1 shows the occupations to which the bill applies these limitations.

**Table 1: Occupations with Disciplinary Actions Limited by the Bill**

<b>Bill Section</b>	<b>Statute (CGS §)</b>	<b>Occupation</b>
11	20-195p	Clinical social worker and master social worker
12	20-195ee	Professional counselor
13	20-195qqq	Art therapist
14	20-206s	Dietician-nutritionist
15	20-265b	Esthetician
16	20-265c	Eyelash technician
17	20-265d	Nail technician
18	20-281a	Public accountant
19	20-294	Architect
20	20-334	Tradesperson in electrical; plumbing and piping; solar; heating, piping, cooling, and sheet metal; fire protection sprinkler systems; elevator installation, repair, and maintenance; irrigation; automotive glass; flat glass; or gas hearth work field  Residential stair lift technician; swimming pool builder (and other occupations covered by Chapter 393)

21	20-341gg	Major contractor
22	20-363	Sanitarian
23	20-442a	Asbestos contractor and consultant
24	20-481	Lead abatement consultant, contractor, and worker
25	20-540	Public service gas technician
26	22a-66e	Pesticide application business (also similarly limits the ability to deny a registration)
27	23-61i	Arborist business (also similarly limits the ability to deny a certificate or registration)
28	29-158	Private detective business
29	29-161v	Security service, security officer, and security officer instructor
30	30-47	Liquor permittee (also similarly limits the ability to grant or renew a permit)

### ***Trades Licenses (§ 31)***

The bill eliminates a current requirement that applicants for certain licenses be of “good moral character” (see occupations under § 20 in Table 1 above).

It also allows the DCP commissioner to issue a license (presumably for these occupations) under a consent order that sets conditions an applicant must meet if the applicant was convicted of a felony and the crime is reasonably related to the applicant's ability to safely or competently perform the duties or responsibilities associated with the license.

### **§ 8 — COUNCIL ON THE ELIMINATION OF OCCUPATIONAL LICENSE COLLATERAL CONSEQUENCES**

The bill establishes the Council on the Elimination of Occupational License Collateral Consequences as part of the Legislative Department.

The council must identify state statutes, regulations, and other laws that create barriers for someone to obtain an occupational license based on their criminal records or that otherwise conflict with § 4 of the bill. The council must also develop recommendations for amending or eliminating these laws to ensure their compliance with § 3 of the bill and the statutory statement on discrimination based on criminal records (see § 1 summary below; the bill also references several other statutes and sections of the bill that do not appear to be applicable).

The bill requires the council, by February 1, 2021, to submit a report on its recommendations to Labor Committee (the council will be unable to meet this deadline as it has already passed).

### ***Council Members***

The bill establishes the council with seven ex-officio members and three appointed members. The ex-officio members are the (1) chairpersons and ranking members of the Labor Committee; (2) the labor commissioner; (3) the consumer protection commissioner; and (4) the executive director of the Commission on Human Rights and Opportunities. All of the ex-officio members may appoint designees to the council; however, the designees of the Labor Committee's chairpersons and ranking members must be members of the General Assembly.

The three appointed council members are as follows: the Labor Committee's House chairperson must appoint a justice-impacted person and a representative from the Institute for Municipal and Regional Policy, and the Labor Committee's Senate chairperson must appoint a representative from the American Civil Liberties Union of Connecticut.

The bill requires the Labor Committee's House and Senate chairpersons to serve as the council's chairpersons and hold its first meeting by August 29, 2021. After that, the council must meet upon the call of the chairpersons or upon the call of a majority of the council members. The Labor Committee's administrative staff must serve as the council's administrative staff.

## **§ 32 — STATE AGENCY REPORTS ON BACKGROUND CHECKS**

The bill requires several state agencies to report certain information about background checks to the Office of Policy and Management within 90 days (presumably after the provision becomes effective on October 1, 2021). The agencies that must report are the departments of Administrative Services, Agriculture, Consumer Protection, Correction, Emergency Services and Public Protection, Public Health, Labor, and the Office of Early Childhood.

The agencies must report on the following topics:

1. the number of employees that perform background checks related to the agency's licensing functions, their job classifications, and the type or level of clearance of the background checks that are being performed;
2. the number of hours each employee spends on average per week performing background checks; and
3. for any licenses that require an applicant to already have some education or training, the feasibility of establishing a criminal history preclearance assessment before the applicants begin the education or training.

They must also (1) assess the feasibility of centralizing and standardizing the background checks performed by state agencies and (2) address any related issues of delegating authority by the agencies.

## **§ 1 — STATEMENT ON EMPLOYMENT OF CRIMINAL OFFENDERS**

Current law states that the legislature finds that the public is best protected when criminal offenders are rehabilitated and returned to society prepared to take their places as productive citizens and that their ability to find meaningful employment is directly related to their normal functioning in the community. It further states that it is the state's policy to encourage all employers to favorably consider providing jobs to qualified individuals, including those who may have criminal conviction records.

The bill expands this statement to (1) also cover people who have been arrested or convicted and (2) specify that their normal functioning in the community is also directly related to their ability to find meaningful occupations, housing, and higher education. It adds that the legislature finds that African-Americans and Hispanics are arrested and incarcerated at rates disproportionate to their representation in the general population and that discrimination in occupation, employment, housing, and higher education based on criminal history records has a disparate impact based on race, ancestry, and national origin.

It also revises the statement on state policy to say that it prohibits all employers, landlords, and higher education institutions from discriminating on the basis of criminal history records, except as otherwise allowed under the laws on human rights and opportunities. (It does not appear that this section's provisions have a legal effect.)

## **BACKGROUND**

### ***Related Bills***

sHB 6431, favorably reported by the Housing Committee, generally prohibits discrimination in rental housing based on an individual's criminal record and allows aggrieved individuals to report alleged violations to the Commission on Human Rights and Opportunities.

HB 6445, favorably reported by the General Law Committee, also requires several state agencies to report certain information about their practices and procedures for performing background checks.

SB 355, reported favorably by the Housing Committee, requires the Department of Housing to adopt regulations establishing a limited time period immediately preceding a rental application during which landlords and housing authorities may consider a prospective tenant's criminal records in evaluating his or her application.

## **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 10 Nay 3 (03/23/2021)