

House File 2351 - Introduced

HOUSE FILE 2351

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A BILL FOR

1 An Act prohibiting employers and employment agencies from
2 seeking the criminal record or criminal history from
3 applicants for employment under certain circumstances,
4 establishing a criminal history employment application task
5 force, providing penalties, and including effective date
6 provisions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

PROHIBITED HIRING PRACTICES — CRIMINAL RECORD OR CRIMINAL HISTORY

Section 1. Section 84A.5, subsection 4, Code 2016, is amended to read as follows:

4. The division of labor services is responsible for the administration of the laws of this state under chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92, 94A, and section 85.68. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

Sec. 2. Section 91.4, subsection 2, Code 2016, is amended to read as follows:

2. The director of the department of workforce development, in consultation with the labor commissioner, shall, at the time provided by law, make an annual report to the governor setting forth in appropriate form the business and expense of the division of labor services for the preceding year, the number of remedial actions taken under chapter 89A, the number of disputes or violations processed by the division and the disposition of the disputes or violations, and other matters pertaining to the division which are of public interest, together with recommendations for change or amendment of the laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 91F, 92, and 94A, and section 85.68, and the recommendations, if any, shall be transmitted by the governor to the first general assembly in session after the report is filed.

Sec. 3. NEW SECTION. 91F.1 **Declarations and purpose.**

1. The general assembly declares that:

- a. Removing obstacles to employment for individuals with criminal records provides economic and social opportunities to a large group of individuals in Iowa, as well as increasing the productivity, health, and safety of Iowa communities.
- b. Employment advertisements in Iowa frequently include language regarding criminal records that is unrelated to the

1 employment vacancy and that either explicitly precludes or
2 strongly dissuades individuals from applying for employment for
3 which they are otherwise qualified.

4 c. Individuals with criminal records represent a group of
5 job seekers ready and able to enlarge and contribute to the
6 workforce.

7 d. Securing employment significantly reduces the risk of
8 recidivism for individuals with criminal records.

9 e. The opportunity for individuals with criminal records
10 to secure employment or to pursue, practice, or engage in
11 a meaningful and profitable trade, occupation, vocation,
12 profession, or business is essential to rehabilitation and
13 their resumption of the responsibilities of citizenship.

14 2. It is the purpose of this chapter to improve the economic
15 viability, health, and security of Iowa communities and to
16 assist individuals with criminal records to reintegrate into
17 the community, become productive members of the workforce, and
18 provide for their families and themselves.

19 Sec. 4. NEW SECTION. 91F.2 Definitions.

20 1. "*Applicant*" means a person pursuing employment with an
21 employer or with or through an employment agency.

22 2. "*Commissioner*" means the labor commissioner, appointed
23 pursuant to section 91.2, or the labor commissioner's designee.

24 3. "*Criminal record or criminal history*" means information
25 collected or possessed by any criminal justice agency or
26 judicial system in this state or in another jurisdiction,
27 including a federal, military, tribal, or foreign jurisdiction,
28 concerning individuals which information includes identifiable
29 descriptions and notations of arrests, detentions, indictments,
30 or other formal criminal charges, and any disposition arising
31 therefrom, including acquittal, deferred judgment, sentencing,
32 correctional supervision, release, or conviction, and any
33 sentence arising from a verdict or plea of guilty or nolo
34 contendere, including a sentence of incarceration, a suspended
35 sentence, a sentence of probation, or a sentence of conditional

1 discharge.

2 4. "*Employer*" means a person who has four or more employees
3 in the current or preceding calendar year and includes an agent
4 of such a person. For purposes of this chapter, individuals
5 who are members of the employer's family shall not be counted
6 as employees.

7 5. "*Employment agency*" means a person who, with or without
8 compensation, regularly brings together those desiring to
9 employ and those desiring employment and includes an agent of
10 such a person.

11 Sec. 5. NEW SECTION. 91F.3 Prohibited hiring practices —
12 exceptions.

13 1. An employer or employment agency shall not inquire
14 about or require disclosure of the criminal record or criminal
15 history of an applicant until the applicant's interview is
16 being conducted or, if an interview will not be conducted,
17 until after a conditional offer of employment is made to the
18 applicant by the employer or employment agency.

19 2. Subsection 1 does not apply to the following positions
20 if an employer or employment agency establishes a separate
21 application form for such positions that includes the title and
22 job description of the position, the specific state or federal
23 law or bonding requirement that applies to the position, and
24 the types of criminal offenses that would preclude an applicant
25 from being hired for the position:

26 a. Positions where employers are required to exclude
27 applicants with certain criminal convictions from employment
28 due to federal or state law.

29 b. Positions where a fidelity bond or an equivalent bond is
30 required and an applicant's conviction of one or more specified
31 criminal offenses would disqualify the applicant from obtaining
32 such bond, in which case an employer may include a question or
33 otherwise inquire whether the applicant has ever been convicted
34 of such specified criminal offenses.

35 3. Subsection 1 does not prohibit an employer or employment

1 agency from notifying applicants in writing of specific
2 offenses that will disqualify an applicant from employment in a
3 particular position as permitted by subsection 2.

4 4. Subsection 1 does not apply to the following positions:

5 a. Positions where an employee will work within the
6 residence of the employer if the employer or members of the
7 employer's family reside therein during such employment.

8 b. Positions where an employee will have entry access to a
9 personal residence or an occupied unit in a multiple housing
10 structure.

11 c. Positions where an employee will render personal service
12 to the person of the employer or members of the employer's
13 family.

14 5. An employment agency shall not be liable for a violation
15 of subsection 1 if the employment agency can demonstrate by
16 clear and convincing evidence that such violation was caused by
17 the employment agency's good-faith reliance on an affirmative
18 representation by an employer that one of the exceptions listed
19 in subsection 2 or 4 applied to the position in question. The
20 employer shall be liable for any such violations.

21 Sec. 6. NEW SECTION. **91F.4 Powers and duties of the**
22 **commissioner.**

23 1. The commissioner may hold hearings and investigate
24 alleged violations of this chapter by an employer or employment
25 agency.

26 2. The commissioner may recover civil penalties in
27 accordance with section 91F.6.

28 Sec. 7. NEW SECTION. **91F.5 Civil penalties — amount.**

29 An employer or employment agency who violates the provisions
30 of this chapter shall be subject to a penalty as follows:

31 1. For a first violation, the commissioner shall issue
32 a written warning to the employer or employment agency that
33 includes notice regarding penalties for subsequent violations
34 and the employer or employment agency shall have thirty days
35 to remedy the violation.

1 2. For a second violation, or if a previous violation is not
2 remedied within thirty days of notice by the commissioner, the
3 commissioner may impose a civil penalty of up to five hundred
4 dollars.

5 3. For a third violation, or if a previous violation is not
6 remedied within sixty days of notice by the commissioner, the
7 commissioner may impose a civil penalty of up to one thousand
8 five hundred dollars.

9 4. For subsequent violations, or if a previous violation is
10 not remedied within ninety days of notice by the commissioner,
11 the commissioner may impose a civil penalty of up to one
12 thousand five hundred dollars for every thirty days that pass
13 thereafter without compliance.

14 Sec. 8. NEW SECTION. 91F.6 Civil penalties — recovery.

15 1. The commissioner may propose that an employer be assessed
16 a civil penalty as provided in section 91F.4 by serving the
17 employer with notice of such proposal in the same manner as an
18 original notice is served under the rules of civil procedure.
19 Upon service of such notice, the proposed assessment shall be
20 treated as a contested case under chapter 17A. However, an
21 employer or employment agency must request a hearing within
22 thirty days of being served.

23 2. If an employer or employment agency does not request
24 a hearing pursuant to subsection 1 or if the commissioner
25 determines, after an appropriate hearing, that an employer
26 or employment agency is in violation of this chapter, the
27 commissioner shall assess a civil penalty in accordance with
28 section 91F.5.

29 3. An employer or employment agency may seek judicial review
30 of any assessment rendered under subsection 2 by instituting
31 proceedings for judicial review pursuant to chapter 17A.
32 However, such proceedings must be instituted in the district
33 court of the county in which the violation or one of the
34 violations occurred and within thirty days of the day on which
35 the employer was notified that an assessment has been rendered.

1 4. After the time for seeking judicial review has expired
2 or after all judicial review has been exhausted and the
3 commissioner's assessment has been upheld, the commissioner
4 shall request the attorney general to recover the assessed
5 penalties in a civil action.

6 5. Civil penalties recovered pursuant to this section shall
7 be remitted by the commissioner to the treasurer of state for
8 deposit in the general fund of the state.

9 Sec. 9. NEW SECTION. 91F.7 Construction.

10 This chapter shall not be construed to require an employer to
11 employ an individual with a criminal record.

12 Sec. 10. EFFECTIVE DATE. This division of this Act takes
13 effect January 1, 2017.

14 DIVISION II

15 CRIMINAL HISTORY EMPLOYMENT APPLICATION TASK FORCE

16 Sec. 11. CRIMINAL HISTORY EMPLOYMENT APPLICATION TASK FORCE
17 AND REPORT.

18 1. A criminal history employment application task force
19 is created. The task force shall consist of the following
20 members:

21 a. The labor commissioner or the labor commissioner's
22 designee, who shall represent public sector employers.

23 b. Two representatives of established civil rights
24 and civil liberties organizations appointed by the labor
25 commissioner.

26 c. Two representatives of private sector employers
27 appointed by the labor commissioner.

28 d. One representative of a private sector labor
29 organization appointed by the labor commissioner.

30 e. One representative of a statewide public sector labor
31 organization appointed by the labor commissioner.

32 2. The task force shall study appropriate voluntary
33 standards and procedures for evaluating employment applications
34 from an individual with a criminal history, including but not
35 limited to the nature of the crime, the age at which the crime

1 was committed, the nature of the duties of the position applied
2 for, and relevant evidence of the individual's rehabilitation.

3 3. The labor services division of the department of
4 workforce development shall provide staffing services for the
5 task force. The labor commissioner or the labor commissioner's
6 designee shall serve as the chairperson of the task force.

7 4. The members of the task force shall serve without
8 compensation and shall not be reimbursed for their expenses.

9 5. The task force shall submit a report regarding its
10 findings and recommendations to the governor and the general
11 assembly no later than January 1, 2017. The report shall
12 include a model pamphlet or other publication in both printed
13 and electronic form on evaluating employment applications
14 from individuals with criminal histories to be distributed to
15 employers in Iowa in a manner similar to other information
16 distributed by the labor commissioner.

17 Sec. 12. EFFECTIVE UPON ENACTMENT. This division of this
18 Act, being deemed of immediate importance, takes effect upon
19 enactment.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 DIVISION I — PROHIBITED HIRING PRACTICES — CRIMINAL
24 RECORD OR CRIMINAL HISTORY. This bill prohibits an employer
25 or employment agency from inquiring about or requiring
26 disclosure of the criminal record or criminal history of an
27 applicant until the applicant's interview is being conducted.
28 If an interview for the position will not be conducted,
29 the prohibition applies until after a conditional offer
30 of employment is made to the applicant by the employer or
31 employment agency.

32 The prohibition does not apply to certain positions listed
33 in the bill if an employer or employment agency establishes
34 a separate application form for such positions that includes
35 certain information listed in the bill. The bill does not

1 prohibit an employer or employment agency from notifying
2 applicants in writing of specific offenses that will disqualify
3 an applicant from employment in a particular position as
4 permitted by these exceptions.

5 The prohibition does not apply to certain additional
6 positions listed in the bill.

7 An employment agency shall not be liable for a violation of
8 the prohibition if the employment agency can demonstrate by
9 clear and convincing evidence that such violation was caused by
10 the employment agency's good-faith reliance on an affirmative
11 representation by an employer that one of the exceptions listed
12 in the bill applied to the position in question. The employer
13 shall be liable for any such violations.

14 The bill defines "applicant" as a person pursuing employment
15 with an employer or with or through an employment agency.
16 The bill defines "employer" as a person who has four or more
17 employees in the current or preceding calendar year and an
18 agent of such a person, excluding family members. The bill
19 defines "employment agency" as a person who, with or without
20 compensation, regularly brings together those desiring to
21 employ and those desiring employment and an agent of such a
22 person.

23 The bill defines "criminal record or criminal history" as
24 information collected or possessed by any criminal justice
25 agency or judicial system in this state or in another
26 jurisdiction, including a federal, military, tribal, or
27 foreign jurisdiction, concerning individuals which information
28 includes identifiable descriptions and notations of arrests,
29 detentions, indictments, or other formal criminal charges,
30 and any disposition arising therefrom, including acquittal,
31 deferred judgment, sentencing, correctional supervision,
32 release, or conviction, and any sentence arising from a verdict
33 or plea of guilty or nolo contendere, including a sentence of
34 incarceration, a suspended sentence, a sentence of probation,
35 or a sentence of conditional discharge.

1 An employer or employment agency that violates the
2 provisions of the bill is subject to civil penalties ranging
3 from a written warning for a first violation to up to \$1,500
4 every 30 days for a fourth or subsequent violation not remedied
5 within 90 days.

6 The labor commissioner may hold hearings and investigate
7 alleged violations of the bill by an employer or employment
8 agency and may recover civil penalties according to the
9 procedural provisions of the bill.

10 Division I of the bill shall not be construed to require an
11 employer to employ an individual with a criminal record.

12 Division I of the bill takes effect January 1, 2017.

13 DIVISION II — CRIMINAL HISTORY EMPLOYMENT APPLICATION TASK
14 FORCE. Division II of the bill creates a criminal history
15 employment application task force. The task force shall study
16 appropriate voluntary standards and procedures for evaluating
17 employment applications from an individual with a criminal
18 history, including but not limited to the nature of the crime,
19 the age at which the crime was committed, the nature of the
20 duties of the position applied for, and relevant evidence of
21 the individual's rehabilitation.

22 The bill lists the membership of the task force. The labor
23 commissioner shall be the chairperson of the task force and
24 the labor services division of the department of workforce
25 development shall provide staffing services for the task force.

26 The task force shall submit a report regarding its findings
27 and recommendations to the governor and the general assembly no
28 later than January 1, 2017. The report shall include a model
29 pamphlet or other publication in both printed and electronic
30 form on evaluating employment applications from individuals
31 with criminal histories to be distributed to employers in Iowa
32 in a manner similar to other information distributed by the
33 labor commissioner.

34 Division II of the bill takes effect upon enactment.