

Senate File 84 - Introduced

SENATE FILE 84
BY COURTNEY

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 providing penalties, and including effective date
5 provisions.

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

1 Section 1. Section 84A.5, subsection 4, Code 2015, is
2 amended to read as follows:

3 4. The division of labor services is responsible for the
4 administration of the laws of this state under chapters 88,
5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,
6 and 94A, and section 85.68. The executive head of the division
7 is the labor commissioner, appointed pursuant to section 91.2.

8 Sec. 2. Section 91.4, subsection 2, Code 2015, is amended
9 to read as follows:

10 2. The director of the department of workforce development,
11 in consultation with the labor commissioner, shall, at the
12 time provided by law, make an annual report to the governor
13 setting forth in appropriate form the business and expense of
14 the division of labor services for the preceding year, the
15 number of remedial actions taken under chapter 89A, the number
16 of disputes or violations processed by the division and the
17 disposition of the disputes or violations, and other matters
18 pertaining to the division which are of public interest,
19 together with recommendations for change or amendment of the
20 laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B,
21 90A, 91A, 91C, 91D, 91E, 91F, 92, and 94A, and section 85.68,
22 and the recommendations, if any, shall be transmitted by the
23 governor to the first general assembly in session after the
24 report is filed.

25 Sec. 3. NEW SECTION. 91F.1 Definitions.

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

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

30 3. "*Employer*" means a person who has fifteen or more
31 employees in the current or preceding calendar year and
32 includes an agent of such a person.

33 4. "*Employment agency*" means a person who, with or without
34 compensation, regularly brings together those desiring to
35 employ and those desiring employment and includes an agent of

1 such a person.

2 Sec. 4. NEW SECTION. 91F.2 Prohibited hiring practices.

3 1. An employer or employment agency shall not inquire about,
4 consider, or require disclosure of the criminal record or
5 criminal history of an applicant until the applicant has been
6 determined qualified for the position and notified that the
7 applicant has been selected for an interview by the employer or
8 employment agency or, if an interview will not be conducted,
9 until after a conditional offer of employment is made to the
10 applicant by the employer or employment agency.

11 2. Subsection 1 does not apply to the following positions:

12 a. Positions where employers are required to exclude
13 applicants with certain criminal convictions from employment
14 due to federal or state law.

15 b. Positions where a fidelity bond or an equivalent bond is
16 required and an applicant's conviction of one or more specified
17 criminal offenses would disqualify the applicant from obtaining
18 such bond, in which case an employer may include a question or
19 otherwise inquire whether the applicant has ever been convicted
20 of such specified criminal offenses.

21 3. Subsection 1 does not prohibit an employer or employment
22 agency from notifying applicants in writing of specific
23 offenses that will disqualify an applicant from employment in a
24 particular position as permitted by subsection 2.

25 Sec. 5. NEW SECTION. 91F.3 Powers and duties of the
26 commissioner.

27 1. The commissioner may hold hearings and investigate
28 alleged violations of this chapter by an employer or employment
29 agency.

30 2. The commissioner may recover civil penalties in
31 accordance with section 91F.5.

32 Sec. 6. NEW SECTION. 91F.4 Civil penalties — amount.

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

35 1. For a first violation, the commissioner shall issue

1 a written warning to the employer or employment agency that
2 includes notice regarding penalties for subsequent violations
3 and the employer or employment agency shall have thirty days
4 to remedy the violation.

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

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

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

18 Sec. 7. NEW SECTION. 91F.5 Civil penalties — recovery.

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

27 2. If an employer or employment agency does not request
28 a hearing pursuant to subsection 1 or if the commissioner
29 determines, after an appropriate hearing, that an employer
30 or employment agency is in violation of this chapter, the
31 commissioner shall assess a civil penalty in accordance with
32 section 91F.4.

33 3. An employer or employment agency may seek judicial review
34 of any assessment rendered under subsection 2 by instituting
35 proceedings for judicial review pursuant to chapter 17A.

1 However, such proceedings must be instituted in the district
2 court of the county in which the violation or one of the
3 violations occurred and within thirty days of the day on which
4 the employer was notified that an assessment has been rendered.

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

10 5. Civil penalties recovered pursuant to this section shall
11 be remitted by the commissioner to the treasurer of state for
12 deposit in the general fund of the state.

13 Sec. 8. EFFECTIVE DATE. This Act takes effect January 1,
14 2016.

15 EXPLANATION

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

18 This bill prohibits an employer or employment agency from
19 inquiring about, considering, or requiring disclosure of the
20 criminal record or criminal history of an applicant until the
21 applicant has been determined qualified for the position and
22 notified that the applicant has been selected for an interview
23 by the employer or employment agency. If an interview for
24 the position will not be conducted, the prohibition applies
25 until after a conditional offer of employment is made to the
26 applicant by the employer or employment agency.

27 The prohibition does not apply to positions where employers
28 are required to exclude applicants with certain criminal
29 convictions from employment due to federal or state law. The
30 prohibition also does not apply to positions where a fidelity
31 bond or an equivalent bond is required and an applicant's
32 conviction of one or more specified criminal offenses would
33 disqualify the applicant from obtaining such bond, in which
34 case an employer may include a question or otherwise inquire
35 whether the applicant has ever been convicted of such specified

1 criminal offenses. The bill does not prohibit an employer
2 or employment agency from notifying applicants in writing
3 of specific offenses that will disqualify an applicant from
4 employment in a particular position as permitted by these
5 exceptions.

6 The bill defines "applicant" as a person pursuing employment
7 with an employer or with or through an employment agency.
8 The bill defines "employer" as a person who has 15 or more
9 employees in the current or preceding calendar year and an
10 agent of such a person. The bill defines "employment agency"
11 as a person who, with or without compensation, regularly brings
12 together those desiring to employ and those desiring employment
13 and an agent of such a person.

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

19 The labor commissioner may hold hearings and investigate
20 alleged violations of the bill by an employer or employment
21 agency and may recover civil penalties according to the
22 provisions of the bill. The bill provides procedures for the
23 recovery of civil penalties.

24 The bill takes effect January 1, 2016.