

Senate File 142 - Introduced

SENATE FILE 142
BY BISIGNANO

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 2019, 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, and 94A, and sections 73A.21 and 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 2019, 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

1 language regarding criminal records that is unrelated to the
2 employment vacancy and that either explicitly precludes or
3 strongly dissuades individuals from applying for employment for
4 which they are otherwise qualified.

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

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

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

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

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

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

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

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

1 sentence, a sentence of probation, or a sentence of conditional
2 discharge.

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

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

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

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

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

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

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

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

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

- 6 a. Positions where an employee will work within the
7 residence of the employer if the employer or members of the
8 employer's family reside therein during such employment.
9 b. Positions where an employee will have entry access to a
10 personal residence or an occupied unit in a multiple housing
11 structure.
12 c. Positions where an employee will render personal service
13 to the person of the employer or members of the employer's
14 family.

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

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

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

27 2. The commissioner may assess and recover civil penalties
28 in accordance with sections 91F.5 and 91F.6.

29 3. The commissioner shall adopt rules pursuant to chapter
30 17A to administer this chapter.

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

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

34 1. For a first violation, the commissioner shall issue
35 a written warning to the employer or employment agency that

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

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

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

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

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

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

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

32 3. An employer or employment agency may seek judicial
33 review of any assessment made under subsection 2 by instituting
34 proceedings for judicial review pursuant to chapter 17A.
35 However, such proceedings must be instituted in the district

1 court of the county in which the violation or one of the
2 violations occurred and within thirty days of the day on which
3 the employer was notified that an assessment has been made.

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

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

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

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

15 Sec. 10. EFFECTIVE DATE. This division of this Act takes
16 effect January 1, 2020.

17 DIVISION II

18 CRIMINAL HISTORY EMPLOYMENT APPLICATION TASK FORCE

19 Sec. 11. CRIMINAL HISTORY EMPLOYMENT APPLICATION TASK FORCE
20 AND REPORT.

21 1. A criminal history employment application task force
22 is created. The task force shall consist of the following
23 members:

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

26 b. Two representatives of established civil rights
27 and civil liberties organizations appointed by the labor
28 commissioner.

29 c. Two representatives of private sector employers
30 appointed by the labor commissioner.

31 d. One representative of a private sector labor
32 organization appointed by the labor commissioner.

33 e. One representative of a statewide public sector labor
34 organization appointed by the labor commissioner.

35 2. The task force shall study appropriate voluntary

1 standards and procedures for evaluating employment applications
2 from an individual with a criminal history, including but not
3 limited to the nature of the crime, the age at which the crime
4 was committed, the nature of the duties of the position applied
5 for, and relevant evidence of the individual's rehabilitation.

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

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

12 5. The task force shall submit a report regarding its
13 findings and recommendations to the governor and the general
14 assembly no later than January 1, 2020. The report shall
15 include a model pamphlet or other publication in both printed
16 and electronic form on evaluating employment applications
17 from individuals with criminal histories to be distributed to
18 employers in Iowa in a manner similar to other information
19 distributed by the labor commissioner.

20 Sec. 12. EFFECTIVE DATE. This division of this Act, being
21 deemed of immediate importance, takes effect upon enactment.

22 EXPLANATION

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

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

34 The prohibition does not apply to certain positions listed
35 in the division if an employer or employment agency establishes

1 a separate application form for such positions that includes
2 certain information listed in the division. The division does
3 not prohibit an employer or employment agency from notifying
4 applicants in writing of specific offenses that will disqualify
5 an applicant from employment in a particular position as
6 permitted by these exceptions.

7 The prohibition does not apply to certain additional
8 positions listed in the division.

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

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

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

1 incarceration, a suspended sentence, a sentence of probation,
2 or a sentence of conditional discharge.

3 An employer or employment agency that violates the
4 provisions of the division is subject to civil penalties
5 ranging from a written warning for a first violation to up to
6 \$1,500 every 30 days for a fourth or subsequent violation not
7 remedied within 90 days.

8 The labor commissioner may hold hearings and investigate
9 alleged violations of the division by an employer or employment
10 agency, may assess and recover civil penalties and seek
11 attorney general assistance in such recovery according to the
12 procedural provisions of the division, and shall adopt rules to
13 administer the division.

14 The division shall not be construed to require an employer to
15 employ an individual with a criminal record.

16 The division takes effect January 1, 2020.

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

26 The division lists the membership of the task force. The
27 labor commissioner shall be the chairperson of the task force
28 and the labor services division of the department of workforce
29 development shall provide staffing services for the task force.

30 The task force shall submit a report regarding its findings
31 and recommendations to the governor and the general assembly no
32 later than January 1, 2020. The report shall include a model
33 pamphlet or other publication in both printed and electronic
34 form on evaluating employment applications from individuals
35 with criminal histories to be distributed to employers in Iowa

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1 in a manner similar to other information distributed by the
2 labor commissioner.

3 The division takes effect upon enactment.