

**Senate File 390 - Introduced**

SENATE FILE 390

BY MATHIS and ZUMBACH

**A BILL FOR**

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

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

DIVISION I

PROHIBITED HIRING PRACTICES FOR PUBLIC EMPLOYERS — 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, 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 a  
22 public employer.

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. "*Public employer*" means the state of Iowa, its boards,  
4 commissions, agencies, departments, and its political  
5 subdivisions including school districts and other special  
6 purpose districts.

7 Sec. 5. NEW SECTION. 91F.3 **Prohibited hiring practices for**  
8 **public employers — exceptions.**

9 1. A public employer shall not inquire about or require  
10 disclosure of the criminal record or criminal history of an  
11 applicant until the applicant's interview is being conducted  
12 or, if an interview will not be conducted, until after a  
13 conditional offer of employment is made to the applicant by the  
14 public employer.

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

22 a. Positions where public employers are required to exclude  
23 applicants with certain criminal convictions from employment  
24 due to federal or state law.

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

31 3. Subsection 1 does not prohibit a public employer from  
32 notifying applicants in writing of specific offenses that  
33 will disqualify an applicant from employment in a particular  
34 position as permitted by subsection 2.

35 Sec. 6. NEW SECTION. 91F.4 **Powers and duties of the**

1 commissioner.

2 1. The commissioner may hold hearings and investigate  
3 alleged violations of this chapter by a public employer.

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

6 3. The commissioner shall adopt rules pursuant to chapter  
7 17A to administer this chapter.

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

9 A public employer who violates the provisions of this  
10 chapter shall be subject to a penalty as follows:

11 1. For a first violation, the commissioner shall issue a  
12 written warning to the public employer that includes notice  
13 regarding penalties for subsequent violations, and the public  
14 employer shall have thirty days to remedy the violation.

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

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

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

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

29 1. The commissioner may propose that a public employer  
30 be assessed a civil penalty as provided in section 91F.4 by  
31 serving the public employer with notice of such proposal in the  
32 same manner as an original notice is served under the rules of  
33 civil procedure. Upon service of such notice, the proposed  
34 assessment shall be treated as a contested case under chapter  
35 17A. However, a public employer must request a hearing within

1 thirty days of being served.

2 2. If a public employer does not request a hearing pursuant  
3 to subsection 1 or if the commissioner determines, after an  
4 appropriate hearing, that a public employer is in violation of  
5 this chapter, the commissioner shall assess a civil penalty in  
6 accordance with section 91F.5.

7 3. A public employer may seek judicial review of any  
8 assessment made under subsection 2 by instituting proceedings  
9 for judicial review pursuant to chapter 17A. However, such  
10 proceedings must be instituted in the district court of the  
11 county in which the violation or one of the violations occurred  
12 and within thirty days of the day on which the public employer  
13 was notified that an assessment has been made.

14 4. After the time for seeking judicial review has expired  
15 or after all judicial review has been exhausted and the  
16 commissioner's assessment has been upheld, the commissioner  
17 shall request the attorney general to recover the assessed  
18 penalties in a civil action.

19 5. Civil penalties recovered pursuant to this section shall  
20 be remitted by the commissioner to the treasurer of state for  
21 deposit in the general fund of the state.

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

23 This chapter shall not be construed to require a public  
24 employer to employ an individual with a criminal record.

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

27 DIVISION II

28 CRIMINAL HISTORY EMPLOYMENT APPLICATION TASK FORCE

29 Sec. 11. CRIMINAL HISTORY EMPLOYMENT APPLICATION TASK FORCE  
30 AND REPORT.

31 1. A criminal history employment application task force  
32 is created. The task force shall consist of the following  
33 members:

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

1 b. Two representatives of established civil rights  
2 and civil liberties organizations appointed by the labor  
3 commissioner.

4 c. Two representatives of public employers appointed by the  
5 labor commissioner.

6 d. One representative of a statewide public sector labor  
7 organization appointed by the labor commissioner.

8 2. The task force shall study appropriate voluntary  
9 standards and procedures for evaluating employment applications  
10 from an individual with a criminal history, including but not  
11 limited to the nature of the crime, the age at which the crime  
12 was committed, the nature of the duties of the position applied  
13 for, and relevant evidence of the individual's rehabilitation.

14 3. The labor services division of the department of  
15 workforce development shall provide staffing services for the  
16 task force. The labor commissioner or the labor commissioner's  
17 designee shall serve as the chairperson of the task force.

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

20 5. The task force shall submit a report regarding its  
21 findings and recommendations to the governor and the general  
22 assembly no later than January 1, 2020. The report shall  
23 include a model pamphlet or other publication in both printed  
24 and electronic form on evaluating employment applications from  
25 individuals with criminal histories to be distributed to public  
26 employers in Iowa in a manner similar to other information  
27 distributed by the labor commissioner.

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

30 EXPLANATION

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

33 DIVISION I — PROHIBITED HIRING PRACTICES — CRIMINAL RECORD  
34 OR CRIMINAL HISTORY. Division I of this bill prohibits a  
35 public employer from inquiring about or requiring disclosure

1 of the criminal record or criminal history of an applicant for  
2 employment until the applicant's interview is being conducted.  
3 If an interview for the position will not be conducted,  
4 the prohibition applies until after a conditional offer of  
5 employment is made to the applicant by the public employer.

6 The prohibition does not apply to certain positions listed  
7 in the division if a public employer establishes a separate  
8 application form for such positions that includes certain  
9 information listed in the division. The division does not  
10 prohibit a public employer from notifying applicants in writing  
11 of specific offenses that will disqualify an applicant from  
12 employment in a particular position as permitted by these  
13 exceptions.

14 The division defines "applicant" as a person pursuing  
15 employment with a public employer. The division defines  
16 "public employer" as the state of Iowa, its boards,  
17 commissions, agencies, departments, and its political  
18 subdivisions including school districts and other special  
19 purpose districts.

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

33 A public employer that violates the provisions of the  
34 division is subject to civil penalties ranging from a written  
35 warning for a first violation to up to \$1,500 every 30 days for



1 a fourth or subsequent violation not remedied within 90 days.

2 The labor commissioner may hold hearings and investigate  
3 alleged violations of the division by a public employer, may  
4 assess and recover civil penalties and seek attorney general  
5 assistance in such recovery according to the procedural  
6 provisions of the division, and shall adopt rules to administer  
7 the division.

8 The division shall not be construed to require a public  
9 employer to employ an individual with a criminal record.

10 The division takes effect January 1, 2020.

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

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

24 The task force shall submit a report regarding its findings  
25 and recommendations to the governor and the general assembly no  
26 later than January 1, 2020. The report shall include a model  
27 pamphlet or other publication in both printed and electronic  
28 form on evaluating employment applications from individuals  
29 with criminal histories to be distributed to public employers  
30 in Iowa in a manner similar to other information distributed by  
31 the labor commissioner.

32 The division takes effect upon enactment.