



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5334

by Rep. Sonya M. Harper

SYNOPSIS AS INTRODUCED:

New Act

Creates the Employee Background Fairness Act. Provides that an employer may not refuse to hire an individual and may not discharge an individual because of the individual's criminal history unless the individual has one or more convictions and there is a direct relationship between one or more of an individual's convictions and the specific employment sought. Prohibits retaliation for exercising rights under the Act. Provides that an individual denied or discharged from employment because of his or her criminal history in violation of the Act may recover from the employer in a civil action: (1) damages in the amount of \$2,000 or actual damages, whichever is greater; (2) costs and such reasonable attorney fees as may be allowed by the Court; and (3) any other relief as may be appropriate, including punitive damages. Defines terms. Effective immediately.

LRB100 19521 JLS 34788 b

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Employee Background Fairness Act.

6 Section 5. Definitions. As used in this Act:

7 "Applicant" means any person pursuing employment with an
8 employer.

9 "Conviction" means a judgment of guilt or nolo contendere
10 or any disposition arising therefrom, including sentencing,
11 correctional supervision, rehabilitation, or release.
12 "Conviction" does not include qualified probation or an order
13 of supervision, as those terms are used in Section 5.2 of the
14 Criminal Identification Act, that has been discharged or
15 dismissed shall not be deemed a conviction.

16 "Criminal history" means an arrest, complaint, indictment,
17 or any disposition arising therefrom.

18 "Criminal history record information" means records of
19 arrest, complaint, indictment, or any disposition arising
20 therefrom.

21 "Criminal history report" means any written, oral, or other
22 communication of information that includes criminal history
23 record information about a natural person.

1 "Direct relationship" means the nature of criminal conduct
2 for which the applicant was convicted has a direct bearing on
3 his or her fitness or ability to perform one or more of the
4 duties or responsibilities necessarily related to the
5 employment in question, and does not include whether a criminal
6 history has a bearing on an applicant's character or
7 trustworthiness generally.

8 "Employee" means an individual who receives compensation
9 for performing services for an employer under an express or
10 implied contract of hire.

11 "Employment" means any occupation or vocation for which an
12 individual receives compensation for performing services for
13 an employer under an express or implied contract for hire.

14 "Employer" means an individual or entity that permits one
15 or more individuals to work or that accepts applications for
16 employment or is an agent of an employer.

17 Section 10. Use of criminal history record information.

18 (a) Except when the hiring of an employee is prohibited by
19 law, an employer shall not fail or refuse to hire or recruit
20 and shall not discharge an individual because of the
21 individual's criminal history unless:

22 (1) the individual has one or more convictions; and

23 (2) there is a direct relationship between one or more
24 of an individual's convictions and the specific employment
25 sought.

1 (b) An employer who refuses to hire or discharges an
2 individual because of his or her criminal history shall provide
3 the individual a written notice that includes:

4 (1) the specific conviction or convictions that bear a
5 direct relationship to the employment sought or for which
6 there is a federal, State, or local law prohibiting the
7 employer from employing the individual;

8 (2) a clear statement informing the individual that he
9 or she may provide information to the employer (A) that the
10 criminal history record information is inaccurate or (B)
11 that there are mitigating circumstances that demonstrate
12 the individual's fitness for the position including, but
13 not limited to, activities since the date of the offense
14 and evidence of rehabilitation;

15 (3) a period of no less than 7 days from the date of
16 the notice within which the individual must provide such
17 information to the employer; and

18 (4) a copy of any criminal history report about the
19 individual obtained by the employer.

20 (c) An employer shall conduct a good faith, individualized
21 assessment of any evidence of mitigation or rehabilitation and
22 the individual's fitness for the position sought or about the
23 accuracy of criminal history record information provided by the
24 individual before making a final hiring or discharge decision.

25 (d) An employer must hold the position sought by the
26 individual open until (A) the individual provides additional

1 information and the review of that information under subsection
2 (c) is complete or (B) until the period to provide additional
3 information has expired if no information is provided. At or
4 before the employer fills the position, the employer must
5 provide the individual with a final written determination that
6 includes the following:

- 7 (1) a statement of the employer's final determination;
- 8 (2) a description of an appeal process, if any; and
- 9 (3) the earliest date, if any, when the individual may
10 reapply for the position.

11 Section 15. Retaliatory or discriminatory acts. A person
12 may not retaliate or discriminate against a person because the
13 person has done or was about to do any of the following:

- 14 (1) File a complaint under this Act.
- 15 (2) Testify, assist, or participate in an
16 investigation, proceeding, or action concerning a
17 violation of this Act.
- 18 (3) Oppose a violation of this Act.

19 Section 20. Waiver. An employer may not require an
20 applicant or employee to waive any right under this Act. An
21 agreement by an applicant or employee to waive any right under
22 this Act is invalid and unenforceable.

23 Section 25. Remedies for violation of the Act. An

1 individual denied or discharged from employment because of his
2 or her criminal history in violation of this Act may recover
3 from the employer in a civil action:

4 (1) damages in the amount of \$2,000 or actual damages,
5 whichever is greater;

6 (2) costs and such reasonable attorney fees as may be
7 allowed by the Court; and

8 (3) any other relief as may be appropriate, including
9 punitive damages.

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.