



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3194

Introduced 2/11/2020, by Sen. Omar Aquino

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 reasonable attorney's fees as allowed by the court; and (3) any other appropriate relief, including punitive damages. Defines terms. Effective immediately.

LRB101 19654 JLS 69142 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 "Adverse action" means to fail or refuse to hire an
8 applicant, to discharge or to not promote any employee, or to
9 classify employees in a way that would deprive or tend to
10 deprive any individual of employment opportunities.

11 "Applicant" means a person pursuing employment with an
12 employer.

13 "Conviction" means a judgment of conviction or sentence
14 entered upon a plea of guilty or upon a verdict or finding of
15 guilty of a criminal offense, rendered by a legally constituted
16 jury or by a court in a case without a jury. For purposes of
17 this Act, an order of supervision or qualified probation, as
18 defined by Section 5.2 of the Criminal Identification Act, that
19 has been discharged or dismissed shall not be deemed a
20 conviction.

21 "Criminal history record information" means records of
22 arrest, complaint, indictment, or any disposition arising
23 therefrom.

1 "Criminal history report" means any written, oral, or other
2 communication of information that includes criminal history
3 record information about a natural person, produced by law
4 enforcement or police agencies, courts, a consumer reporting
5 agency, or an employment screening agency or business.

6 "Direct relationship" means a consideration of whether the
7 employment position offers the opportunity for the same or a
8 similar offense to occur and whether circumstances leading to
9 the conduct for which the person was convicted will recur in
10 the employment position.

11 "Employee" means an individual who receives compensation
12 for performing services for an employer under an express or
13 implied contract of hire.

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

17 "Employment" means any occupation or vocation, including,
18 but not limited to, temporary or seasonal work, work through a
19 temporary or other employment agency, or any form of vocational
20 or educational training program for which an individual
21 receives compensation for performing services for an employer
22 under an express or implied contract for hire.

23 Section 10. Use of criminal history record information.

24 (a) An employer may not base an adverse action, in whole or
25 in part, against an employee or applicant, based on criminal

1 history record information without adhering to the
2 requirements of this Act. Unless authorized by law, no inquiry
3 or adverse action may be taken, based in whole or in part on:

4 (1) an arrest not leading to conviction;

5 (2) participation in or completion of a diversion or a
6 deferral of judgment program;

7 (3) a conviction that has been vacated or ordered
8 expunged, sealed, or impounded by a court;

9 (4) an adjudication or other information regarding a
10 matter processed through the juvenile court system; or

11 (5) information pertaining to an offense other than a
12 felony or misdemeanor.

13 (b) Before taking any adverse action based, in whole in
14 part, on criminal history record information, the employer or
15 the employer's agent shall provide the applicant or employee a
16 written notice that includes:

17 (1) a copy of any criminal history report about the
18 individual obtained by the employer;

19 (2) the specific conviction or convictions that have a
20 direct relationship to the employment sought or for which
21 there is a federal, State, or local law prohibiting the
22 employer from employing or placing the applicant or
23 employee;

24 (3) a clear statement informing the applicant or
25 employee that he or she may provide information to the
26 employer that:

1 (A) the criminal history record information is
2 inaccurate;

3 (B) the criminal history information is prohibited
4 from inquiry or consideration under Section (a); or

5 (C) there are mitigating circumstances that
6 demonstrate the individual's fitness for the position
7 including, but not limited to, activities since the
8 date of the offense and evidence of rehabilitation.

9 An employee or applicant has a period of not less than 7
10 days from the date of notice within which the applicant or
11 employee may provide to the employer information concerning
12 rehabilitation and mitigating circumstances.

13 (c) An employer shall conduct a good faith, individualized
14 assessment of any information provided by the applicant or
15 employee before taking a final adverse action. This assessment
16 shall include any evidence of mitigation or rehabilitation
17 since the conviction or evidence about the accuracy of criminal
18 history record information provided by the applicant or
19 employee.

20 (d) An employer must hold the position sought by the
21 applicant or employee open until the individual provides
22 additional information and the review of that information under
23 subsection (c) or until the period of time to provide
24 additional information under subsection (c) has passed if no
25 information is provided. At or before the time the employer
26 fills the position, the employer must provide the applicant or

1 employee with a final written determination that includes the
2 following:

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

7 Section 15. Retaliatory or discriminatory acts. A person
8 shall not retaliate or discriminate against an applicant or
9 employee because the person has done or was about to do any of
10 the following:

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

16 Section 20. Waiver. An employer shall not require an
17 applicant or employee to waive any right under this Act. An
18 agreement by an applicant or employee to waive any right under
19 this Act is invalid and unenforceable.

20 Section 25. Remedies for violation of the Act. An applicant
21 or employee denied employment or discharged from employment
22 because of his or her criminal history in violation of this Act
23 may recover from the employer in a civil action:

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

3 (2) costs and such reasonable attorney's fees as may
4 be allowed by the court; and

5 (3) any other relief as may be appropriate, including
6 punitive damages.

7 Section 30. Civil immunity. Except for willful or wanton
8 misconduct or when required by law, an employer shall not be
9 civilly liable for failure to consider criminal history record
10 information of an applicant or employee or for limiting its
11 inquiry into an applicant's or employee's criminal history
12 pursuant this Act.

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.