



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB5701

by Rep. Rita Mayfield

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Best Candidate for the Job Act. Provides that an employer may not inquire into or require disclosure of a job applicant's criminal record or criminal history before the candidate has been notified that the candidate has been selected for a job interview or has been offered a conditional offer of employment. Requires consideration of the nature and gravity of a candidate's conviction record, the time elapsed since the conviction, and whether the conviction has a direct bearing on the candidate's fitness before excluding a candidate. Authorizes civil remedies. Provides that the Department of Labor may impose penalties for violations. Effective January 1, 2015.

LRB098 18610 JLS 55483 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 Best  
5 Candidate for the Job Act.

6 Section 5. Findings. The General Assembly finds that it is  
7 in the public interest to do more to give Illinois employers  
8 access to the broadest pool of qualified applicants possible,  
9 observe the civil rights of those seeking employment, and  
10 ensure that all qualified applicants are properly considered  
11 for employment opportunities and are not pre-screened or denied  
12 an employment opportunity unnecessarily or unjustly.

13 Section 10. Definitions. As used in this Act:

14 "Business necessity" means an employer finds that  
15 excluding a candidate from employment is necessary to avoid a  
16 substantial risk to property or the safety or welfare of  
17 specific individuals or the general public.

18 "Candidate" means a person considered by an employer when  
19 identifying potential employees including, but not limited to,  
20 persons who ask to be considered for employment, request  
21 information from an employer regarding potential employment,  
22 or are pursuing employment with an employer in response to some

1 indication that an employer may have employment opportunities  
2 available.

3 "Employer" means an entity or person that employs one or  
4 more persons.

5 "Employment" means an occupation or vocation.

6 "Employment application" means a form used by an employer  
7 to help determine a candidate's suitability for employment that  
8 is completed before a conditional offer of employment or  
9 written notification of an intent to interview by the employer.

10 Section 15. Employer pre-screening.

11 (a) An employer may not, on the face of an employment  
12 application or through any other means, inquire about or into,  
13 consider, or require disclosure of the criminal record or  
14 criminal history of a candidate for employment until the  
15 candidate has been notified that he or she has been selected  
16 for an interview by the employer or, if there is not an  
17 interview, a conditional offer of employment has been made to  
18 the candidate.

19 (b) The requirements set forth in subsection (a) do not  
20 apply if an employer is required to exclude candidates with  
21 certain criminal convictions from employment due to federal or  
22 State law.

23 (c) This Section does not prohibit an employer from  
24 notifying candidates that law or the employer's policy may  
25 disqualify an individual based upon criminal conviction

1 history if the exclusion is job-related.

2 Section 20. Hiring candidates and employer protections.

3 (a) An employer may exclude a candidate from employment  
4 only if it is a business necessity after first considering the  
5 following: the nature and gravity of the candidate's conviction  
6 record; the amount of time that has passed since the relevant  
7 conviction or convictions or the completion of the sentence for  
8 the conviction in question; and whether the conviction or  
9 convictions have a direct bearing on the candidate's fitness to  
10 perform one or more essential duties of the employment in  
11 question.

12 (b) An employer that demonstrates that it has hired a  
13 candidate pursuant to this Act is not civilly or criminally  
14 liable for an act or omission by the candidate except for a  
15 willful or wanton act by the employer in hiring the candidate.  
16 In any legal proceeding against an employer regarding the  
17 employment of a candidate, the employer shall have a rebuttable  
18 presumption that the employer performed its due diligence and  
19 acted in good faith in hiring the candidate.

20 Section 25. Remedies.

21 (a) A candidate or class of candidates injured by a  
22 violation of this Act may bring a civil action in the circuit  
23 court to obtain injunctive relief, damages, or both.

24 (b) The court shall award costs, reasonable litigation

1 expenses, and reasonable attorney's fees to a person who  
2 prevails as a plaintiff in an action authorized under  
3 subsection (a) of this Section.

4 Section 30. Violations; penalties. The Illinois Department  
5 of Labor shall investigate any alleged violation of this Act by  
6 an employer. If the Department finds that a violation has  
7 occurred, the Director may impose the following penalties:

8 (1) For the first violation, the Director shall issue a  
9 written warning to the employer that includes a notice  
10 setting forth the penalties for subsequent violations and  
11 stating that the employer has 30 days to remedy the  
12 violation.

13 (2) For second and subsequent violations, or if the  
14 first violation is not remedied within 30 days after notice  
15 by the Department, the Director may impose a civil penalty  
16 of up to \$500 after notice to the employer and an  
17 opportunity for the employer to be heard in an  
18 administrative hearing. The Attorney General may bring an  
19 action in the circuit court to enforce the collection of  
20 any civil penalty imposed.

21 Section 99. Effective date. This Act takes effect January  
22 1, 2015.