



www.lsc.ohio.gov

# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**S.B. 143**  
**136<sup>th</sup> General Assembly**

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Craig and Blessing

Kelly Bomba, Attorney

### SUMMARY

- Prohibits private employers from inquiring about or considering the criminal background of an applicant on any initial employment application.
- Prohibits a private employer from considering, while conducting a criminal background check in connection with any application for employment, an arrest not followed by conviction or referral to or participation in a pre-trial diversion program.
- Prohibits a private employer from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any right provided under the bill.
- Specifies that a violation of any of the bill's prohibitions described above is an unlawful discriminatory practice in employment under Ohio's Civil Rights Law.
- Allows an applicant who is injured by an alleged violation of the bill to file a complaint with the Ohio Civil Rights Commission in accordance with continuing law.
- Specifies a process that a private employer must follow if the employer intends to deny an applicant a position of employment because of the applicant's criminal background.
- Exempts any position where an employer is required by any federal, state, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal background from the bill.

### DETAILED ANALYSIS

#### Inquiring into or considering criminal background

The bill prohibits an employer from doing any of the following:

- Including on any initial application for employment any question that seeks the disclosure of an applicant's criminal background;

- Inquiring into or considering the criminal background of an applicant, including any inquiry about criminal background on any initial employment application;
- Considering, distributing, or disseminating information about either of the following while conducting a criminal background check in connection with any application for employment:
  - Arrest not followed by conviction;
  - Referral to or participation in a pre-trial diversion program under Ohio law or a similar diversion program under rules of a court.
- Interfering with, restraining, or denying the exercise of, or the attempt to exercise, any right provided under the bill.<sup>1</sup>

The bill specifies that nothing in it may be construed to prohibit an employer from conducting a criminal background check not in conflict with the bill's prohibitions.<sup>2</sup>

For purposes of the bill, an "employer" means a private employer with five or more employees, or the employer's agent. The bill does not apply to a state agency or political subdivision. Continuing law prohibits a state agency or political subdivision from including on any employment application form any question concerning an applicant's criminal background. That law allows a state agency or political subdivision to include on any employment application form a statement notifying an applicant of any provision of state or federal law that disqualifies an individual with a particular criminal history from employment in a particular position.<sup>3</sup>

## **Enforcement**

A violation of the prohibitions described above is an unlawful discriminatory practice in employment for purposes of Ohio's Civil Rights Law. An applicant who is injured by an alleged violation may file a complaint with the Ohio Civil Rights Commission in accordance with continuing law.<sup>4</sup>

Under continuing law, any individual may file a charge with Ohio's Civil Rights Commission (which enforces the Civil Rights Law) alleging that another individual or entity has engaged or is engaging in an unlawful discriminatory practice relating to employment. The charge must be in writing and made under oath. An individual must file a charge with the Commission within two years after the alleged unlawful discriminatory practice was committed. The Commission may investigate the charge and may initiate further action under procedures specified in the law. Although the Commission must first attempt to induce compliance with the Civil Rights Law through informal methods, if, after a hearing, the Commission ultimately determines that an

---

<sup>1</sup> R.C. 4113.86(B).

<sup>2</sup> R.C. 4113.86(C).

<sup>3</sup> R.C. 4113.86(A) and R.C. 9.73, not in the bill.

<sup>4</sup> R.C. 4113.86(I), by reference to R.C. 4112.02(A) and 4112.051, not in the bill.

unlawful discriminatory practice has occurred, it must issue a cease and desist order to remedy the situation and order any further action necessary to effectuate the purpose of the law.<sup>5</sup>

Additionally, continuing law allows an individual subject to an unlawful discriminatory practice to sue for damages, injunctive relief, or any other appropriate relief. For a discriminatory practice that relates to employment, an individual can only sue for damages if the individual first files a complaint with the Commission and receives a notice of right to sue. An individual may only bring a lawsuit within two years after the alleged discriminatory practice occurred. Filing a complaint with the Commission extends the statute of limitations for an employment-related discrimination suit.<sup>6</sup>

## **Denying employment because of criminal background**

An employer that intends to deny an applicant a position of employment because of the applicant's criminal background must make an individualized assessment of whether the applicant's criminal background has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment, the employer must consider all of the following:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense was committed or conduct occurred and completion of the sentence;
- The nature of the job held or sought.

An employer may commit the results of this individualized assessment to writing.<sup>7</sup>

### **Written notice of preliminary decision**

If an employer makes a preliminary decision that the applicant's criminal background disqualifies the applicant from employment, the bill requires the employer to notify the applicant of the preliminary decision in writing. The employer may justify or explain the employer's reasoning for making the preliminary decision. The bill requires an employer to include all of the following with the written decision:

- A notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer;
- A copy of the criminal background check, if any;
- An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond.

---

<sup>5</sup> R.C. 4112.051, not in the bill.

<sup>6</sup> R.C. 4112.052, not in the bill.

<sup>7</sup> R.C. 4113.86(D).

The bill also requires the employer to include, in the explanation of the applicant's right to respond to the notice described above, information informing the applicant that the applicant may submit in the response evidence challenging the accuracy of the criminal background check that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.<sup>8</sup>

### **Period to respond**

The bill requires that an applicant have at least five days to respond to the notice provided to the applicant before the employer may make a final decision. Within that time period, the applicant may notify the employer in writing that the applicant disputes the accuracy of the criminal background check that was the basis for the preliminary decision to rescind the offer. If, within that time period, the applicant disputes the accuracy of the criminal background check and is taking specific steps to obtain evidence supporting that assertion, the bill requires that the applicant have five additional days to respond to the notice. The bill requires an employer to consider information submitted by the applicant before making a final decision.<sup>9</sup>

### **Written notice of final decision**

If an employer makes a final decision to deny an application because of the applicant's criminal background, the employer must notify the applicant in writing of all the following:

- The final denial or disqualification;
- Any procedure the employer has for the applicant to challenge the decision or request reconsideration;
- The right to file a complaint with the Ohio Civil Rights Commission.

The employer may justify or explain the employer's reasoning for making the final denial or disqualification.<sup>10</sup>

### **Exemption**

The bill does not apply to a position where an employer is required by any federal, state, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal background.<sup>11</sup>

---

<sup>8</sup> R.C. 4113.86(E).

<sup>9</sup> R.C. 4113.86(F) and (G).

<sup>10</sup> R.C. 4113.86(G).

<sup>11</sup> R.C. 4113.86(H).

---

---

## HISTORY

Action	Date
Introduced	03-11-25

---