



SPONSOR: Rep. J. Johnson & Rep. Keeley & Sen. Townsend
Reps. Barbieri, Baumbach, Bolden, Brady, Longhurst,
Jaques, Q. Johnson, Kowalko, Mitchell, Mulrooney,
Osienski, Paradee, Potter, Schwartzkopf, Scott, B. Short,
K. Williams, D.E. Williams; Sens. Henry, Marshall,
McDowell, Peterson, Poore

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 167

AN ACT TO AMEND TITLES 19 AND 29 OF THE DELAWARE CODE WITH REGARD TO EMPLOYMENT PRACTICES.

1 WHEREAS, the incarceration rate of the United States has tripled since 1980 and is nearly eight times its historic
2 average; and

3 WHEREAS, it is in the interest of the entire community that persons reentering society after incarceration become
4 productive members of society, and the ability of these persons to obtain employment is key to their productivity; and

5 WHEREAS, research has shown that many individuals with prior criminal histories pose no greater risk of future
6 criminality than do people with no criminal history and are equally qualified, reliable, and trustworthy candidates for
7 employment; and

8 WHEREAS, lack of employment is a significant cause of recidivism, and people who are employed are
9 significantly less likely to be re-arrested; and

10 WHEREAS, persons who have paid their debts to society deserve a fair chance at employment and this act is
11 intended to give the individual with a criminal record an opportunity to be judged on his or her own merit during the
12 submission of the application and at least until the completion of one interview; and

13 WHEREAS, at least 40 cities, 7 counties, and 7 states have passed ordinances and statutes or enacted policies to
14 remove barriers to the employment of those with criminal histories; and

15 WHEREAS, it is the intent and purpose of this law to improve the economic viability, health, and security of
16 Delaware communities and to assist people with conviction histories to reintegrate into the community and to provide for
17 their families and themselves; and

18 WHEREAS, obstacles to employment for people with criminal records and other barriers to re-entry are creating
19 permanent members of an underclass that threatens the health of the community and undermines public safety;

20 NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Section 710, Title 19 of the Delaware Code by adding a new subsection (14) as shown by underlining as follows and redesignating current subsections (14) through (18) as (15) through (19) respectively:

(14) "Public employer" means the State of Delaware, its agencies, or political subdivisions.

Section 2. Amend Section 711, Title 19 of the Delaware Code by inserting a new subsection (g) as shown by underlining as follows and redesignating current subsections (g) through (k) as (h) through (l) respectively:

(g)(1) It shall be an unlawful employment practice for any public employer to inquire into or consider the criminal record, criminal history, credit history, or credit score of an applicant for employment during the initial application process, up to and including the first interview.

(2) A public employer may inquire into or consider an applicant's criminal record, criminal history, credit history, or credit score after it has determined that the applicant is otherwise qualified and has conditionally offered the applicant the position. Such inquiry shall be limited to convictions constituting felonies in Delaware (or in any other state or jurisdiction, conduct which, if committed in Delaware, would constitute a felony) for ten years following release from custody (or sentencing for an individual who was never in custody); and misdemeanor convictions in Delaware (or in any other state or jurisdiction, conduct which, if committed in Delaware, would constitute a misdemeanor offense) for five years following release from custody (or sentencing for an individual who was never in custody).

(3) In connection with any decision regarding employment, a public employer shall consider the following factors in evaluating the candidate or employee and the results of any criminal history inquiry, conducted in accordance with the limitations of this subsection:

(A) The nature of the crime and its relationship to the duties of the position sought or held;

(B) Any information pertaining to the degree of rehabilitation and good conduct, including any information produced by the candidate or employee, or produced on his or her behalf;

(C) Does the prospective job provide an opportunity for the commission of a similar offense(s)?;

(D) Are the circumstances leading to the offense(s) likely to reoccur?;

(E) How much time has elapsed since the offense(s).

(4) This subsection does not apply to any state, county or municipal police force, the Department of Correction, or any position where federal or state law requires or expressly permits the consideration of an applicant's criminal history.

Section 3. Amend Chapter 69, Title 29 of the Delaware Code by adding a new section 6909B as shown by underlining as follows:

6909B. Fair Background Check Practices.

(a) It shall be the policy of the State to do business only with contractors that have adopted and employ written policies, practices and standards that are consistent with the requirements of § 711(g) of Title 9.

(b) Agencies shall review all contractors' background check policies for consistency with the policies of the State as expressed in § 711(g) of Title 9, and shall consider background check policies and practices among the performance criteria in evaluating a contract.

(c) The requirements of this section shall not apply where a criminal background check or credit check is a requirement of State or federal law for a particular class of services.

SYNOPSIS

This bill would prohibit a public employer from inquiring into or considering the criminal record, criminal history or credit history or score of an applicant before it makes a conditional offer to the applicant. It would permit inquiry and consideration of criminal background after the conditional offer has been made. The bill specifies that once a background check is conducted an employer shall only consider felonies for 10 years from the completion of sentence, and misdemeanors for 5 years from the completion of sentence. Further, employers are required to consider several enumerated factors when deciding whether to revoke a conditional offer based on the results of a background check.

Police forces, the Department of Corrections and other positions with a statutory mandate for background checks are excluded from these provisions.

The bill also requires contractors with State agencies to employ similar policies where not in conflict with other State or federal requirements.