

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 254

Introduced by McCollister, 20; Blood, 3; Chambers, 11; Howard, 9; Hunt,
8; Kolowski, 31; Pansing Brooks, 28; Quick, 35; Walz, 15;
Wishart, 27.

Read first time January 14, 2019

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to labor; to amend section 48-202, Revised
- 2 Statutes Cumulative Supplement, 2018; to adopt the Fair Chance
- 3 Hiring Act; to prohibit public and private employers and employment
- 4 agencies from asking for criminal history as prescribed; to
- 5 harmonize provisions; and to repeal the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 3 of this act shall be known and may be
2 cited as the Fair Chance Hiring Act.

3 Sec. 2. For purposes of the Fair Chance Hiring Act:

4 (1) Applicant means (a) any individual considered for, or who
5 requests to be considered for, employment by an employer, or (b) any
6 employee considered for, or who requests to be considered for, another
7 employment position with his or her employer;

8 (2) Employee means an individual employed by an employer;

9 (3) Employer means any person having in his or her employ fifteen or
10 more employees for each working day in each of twenty or more calendar
11 weeks in the current or preceding calendar year and includes the State of
12 Nebraska, governmental agencies, and political subdivisions, regardless
13 of the number of employees, any person acting for or in the interest of
14 an employer, directly or indirectly, and any party whose business is
15 financed in whole or in part under the Nebraska Investment Finance
16 Authority Act, but such term does not include (a) the United States, (b)
17 a corporation wholly owned by the government of the United States, (c) an
18 Indian tribe or (d) a law enforcement agency;

19 (4) Employment agency means any person regularly undertaking with or
20 without compensation to procure employees for an employer or to procure
21 for employees opportunities to work for an employer and includes an agent
22 of such a person, but does not include an agency of the United States,
23 except that such term does include the United States Employment Service
24 and the system of state and local employment services receiving federal
25 assistance;

26 (5) Law enforcement agency means an agency or department of this
27 state or of any political subdivision of this state which is responsible
28 for the prevention and detection of crime, the enforcement of the penal,
29 traffic, or highway laws of this state or any political subdivision of
30 this state, and the enforcement of arrest warrants. Law enforcement
31 agency includes a police department, an office of the town marshal, an

1 office of the county sheriff, the Nebraska State Patrol, and any
2 department to which a deputy state sheriff is assigned as provided in
3 section 84-106; and

4 (6) Person includes one or more individuals, partnerships, limited
5 liability companies, associations, corporations, business trusts, legal
6 representatives, or any organized group of persons.

7 Sec. 3. Section 48-202, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 ~~48-202~~ (1) Except as otherwise provided in this section, an a public
10 employer or employment agency shall not ask an applicant for employment
11 to disclose, orally or in writing, information concerning the applicant's
12 criminal record or history, including any inquiry on any employment
13 application, until the public employer or employment agency has
14 determined the applicant meets the minimum employment qualifications.

15 (2) Prior to determining whether an applicant meets the minimum
16 employment qualifications, an employer or employment agency may ask the
17 applicant to disclose, orally or in writing, information concerning the
18 applicant's criminal record or history, including any inquiry on any
19 employment application, if: This section does not apply to any law
20 enforcement agency, to any

21 (a) The applicant is applying for a position for which: a public
22 employer is required by federal or state law to conduct

23 (i) A a criminal history record information check is required by
24 federal or state law; or

25 (ii) Federal to any position for which federal or state law
26 specifically disqualifies an applicant with a criminal background even if
27 such law allows for a waiver that would allow such applicant to be
28 employed; and or

29 (b) The inquiry or request for disclosure is limited to the types of
30 criminal offenses that the employer or employment agency is required to
31 conduct a check for or that disqualify the applicant.

1 (3)(a) This section does not prevent ~~a public employer that is a~~
2 school district, ~~an~~ ~~or~~ educational service unit, ~~or a private,~~
3 denominational, or parochial school which meets the requirements for
4 legal operation prescribed in Chapter 79 from requiring an applicant ~~for~~
5 ~~employment~~ to disclose an applicant's criminal record or history relating
6 to sexual or physical abuse.

7 (b) This section does not prevent ~~an a public employer or employment~~
8 agency from preparing or delivering an employment application that
9 conspicuously states that a criminal history record information check is
10 required by federal law, state law, or the employer's ~~or employment~~
11 agency's policy.

12 (c) This section does not prevent ~~an a public employer or employment~~
13 agency from conducting a criminal history record information check after
14 the ~~public employer or employment agency~~ has determined that the
15 applicant meets the minimum employment qualifications.

16 (4) If an employer or employment agency inquires about or requests
17 disclosure of an applicant's criminal history record information and the
18 applicant is still eligible for the position under federal or state law,
19 the employer or employment agency must afford the applicant an
20 opportunity to explain the information and the circumstances regarding
21 any convictions or other criminal history, including the applicant's
22 rehabilitation. For purposes of this section:

23 ~~(a) Law enforcement agency means an agency or department of this~~
24 ~~state or of any political subdivision of this state which is responsible~~
25 ~~for the prevention and detection of crime, the enforcement of the penal,~~
26 ~~traffic, or highway laws of this state or any political subdivision of~~
27 ~~this state, and the enforcement of arrest warrants. Law enforcement~~
28 ~~agency includes a police department, an office of the town marshal, an~~
29 ~~office of the county sheriff, the Nebraska State Patrol, and any~~
30 ~~department to which a deputy state sheriff is assigned as provided in~~
31 ~~section 84-106; and~~

1 ~~(b) Public employer means an agency or department of this state or~~
2 ~~of any political subdivision of this state.~~

3 Sec. 4. Original section 48-202, Revised Statutes Cumulative
4 Supplement, 2018, is repealed.