

SB 100 - FINAL VERSION

03/28/2019 1167s
23May2019... 1760h

2019 SESSION

19-0981
08/04

SENATE BILL **100**

AN ACT relative to discrimination in employment based on criminal background checks.

SPONSORS: Sen. Feltes, Dist 15; Sen. Cavanaugh, Dist 16; Sen. Hennessey, Dist 5; Rep. Welch, Rock. 13; Rep. Janvrin, Rock. 37; Rep. Rodd, Merr. 6; Rep. Butler, Carr. 7

COMMITTEE: Commerce

AMENDED ANALYSIS

This bill prohibits discrimination in employment based on criminal background checks.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to discrimination in employment based on criminal background checks.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Opportunity to Compete. Amend RSA 275 by inserting after section 37-b the
2 following new section:

3 275:37-c Opportunity to Compete.

4 I. In this section:

5 (a) "Applicant for employment" means any person an employer considers when
6 identifying potential employees, through any means including, but not limited to, recruitment,
7 solicitation, or seeking personal information, or any person who requests consideration for
8 employment by an employer, or who requests information from an employer related to seeking
9 employment, and includes any person who is currently an employee of the employer.

10 (b) "Criminal record" means information collected by criminal justice agencies on
11 individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments,
12 or other formal criminal charges, and any disposition arising therefrom, including acquittal,
13 sentencing, correctional supervision, release, or conviction including, but not limited to, any sentence
14 arising from a verdict or plea of guilty or nolo contendere, including a sentence of incarceration, a
15 suspended sentence, a sentence of probation, or a sentence of conditional discharge.

16 (c) "Employee" means a person who is hired for a wage, salary, fee, or payment to
17 perform work for an employer, but excludes any person employed in the domestic service of any
18 family or person at the person's home, any independent contractors, or any directors or trustees.
19 The term also includes interns and apprentices.

20 (d) "Employer" means any person, company, corporation, firm, labor organization, or
21 association which has one or more employees over 20 calendar weeks and does business, employs
22 persons, or takes applications for employment within this state, including the state or any
23 subdivision of the state. The term shall include state and local governmental entities, job placement
24 and referral agencies, other employment agencies, but excludes the United States or any of its
25 departments, agencies, boards, or commissions, or any employee or agent thereof.

26 (e) "Employment" means any occupation, vocation, job, or work with pay, including
27 temporary or seasonal work, contingent work, and work through the services of a temporary or other
28 employment agency; any form of vocational apprenticeship; or any internship. The physical location
29 of the prospective employment shall be in whole, or substantial part, within this state.

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1 (f) "Employment application" means a form, questionnaire, or similar document or
2 collection of documents that an applicant for employment is required by an employer to complete
3 whether the application exists in a hard copy, electronic, or Internet medium. "Employment
4 application" does not include criminal background checks necessary to authorize access to a federally
5 regulated facility pursuant to federal law or regulation.

6 II. No public or private employer or employer's agent shall inquire about a prospective
7 employee's prior arrests, criminal charges, or convictions on an employment application, unless the
8 employer needs to screen applications for specific criminal convictions because it is prohibited from
9 hiring those with such convictions under state or federal law, or a position that is exclusive to a
10 contract or subcontract that is subject to state or federal law prohibiting the hiring of an individual
11 with a criminal record, then the employer may inquire only about those prior arrests, criminal
12 charges, or convictions directly implicated by applicable state or federal law.

13 III. As part of an employment application process, no employer or employer's agent shall
14 conduct a criminal record check of an applicant prior to the initial interview or make any inquiry
15 covered by paragraph II except in person or by telephone, if it is standard practice for that employer
16 to conduct telephone interviews. In cases where there is only one applicant for an open position at
17 the close of the application period, the employer may inquire about the applicant's criminal
18 background in writing without the need to do an in person or telephone interview, provided that the
19 applicant has the opportunity to provide a written response.

20 IV. No employer or employer's agent shall discriminate against an employment applicant
21 based on the racial or ethnic origin of the applicant as determined by the applicant's first or last
22 name consistent with state and federal law prohibiting discrimination.

23 2 Effective Date. This act shall take effect 180 days after its passage.

24 VETOED July 19, 2019

25 Veto Sustained September 19, 2019