

MAINE STATE LEGISLATURE

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(Filing No. H-705)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1079, L.D. 1566, Bill, "An Act To Enact the Maine Fair Chance Employment Act"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 5 MRSA c. 337-D is enacted to read:

CHAPTER 337-D

MAINE FAIR CHANCE EMPLOYMENT ACT

§4721. Short title

This chapter may be known and cited as "the Maine Fair Chance Employment Act."

§4722. Declaration of policy

It is the declared public policy of the State to increase meaningful employment opportunities for persons with arrest and conviction records.

§4723. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Applicant. "Applicant" means any person considered, or requesting to be considered, for public employment, including any current public employee considered or requesting to be considered for another position of public employment.

2. Criminal history information. "Criminal history information" includes criminal history record information, as defined in Title 16, section 703, subsection 3, and any other information regarding the criminal history of an applicant, as well as information regarding infractions and other civil violations and information regarding a juvenile crime, regardless of the source.

1 **3. Public employer.** "Public employer" means the State or any office, department,
2 agency, authority, commission, board, institution, hospital or other instrumentality of the
3 State, as well as political subdivisions of the State as defined in Title 30-A, section 2252.

4 **§4724. Limitations on consideration of and disclosure of criminal history**
5 **information**

6 **1. Prohibition.** A public employer may not consider the following categories of
7 criminal history information in connection with an application for employment unless
8 federal or state law specifically requires otherwise:

9 A. Information related to a deferred criminal adjudication, participation in a
10 diversion program or an arrest not followed by a criminal conviction;

11 B. A criminal offense that has been dismissed or pardoned or for which the records
12 have been sealed or expunged;

13 C. Juvenile adjudications;

14 D. Infractions or civil violations; or

15 E. Convictions that were adjudicated more than 3 years prior, excluding any period
16 of incarceration or custody, unless the applicant was convicted of a subsequent
17 offense within the prior 3 years that was not excluded from consideration by
18 paragraphs A to D.

19 **2. Confidential.** Any information pertaining to an applicant's criminal history
20 information obtained in conjunction with the hiring process must remain confidential and
21 may not be used, distributed or disseminated by the State or its political subdivisions,
22 except as specifically required by law. This subsection does not apply to information in
23 aggregate form maintained by a public employer pursuant to section 4727.

24 **§4725. Public employer consideration of criminal history information**

25 **1. Application form.** Except as provided in subsection 3, a public employer may
26 not request criminal history information on its initial employment application form.

27 **2. Interview.** A public employer may request criminal history information during an
28 interview or after the applicant has been determined to be otherwise qualified for the
29 position.

30 **3. Exceptions as required by law.** Subsection 1 does not apply when a federal or
31 state law prohibits persons with certain conviction histories from holding the position and
32 the questions on the application form are limited to the types of criminal history
33 information the prohibition concerns.

34 **4. Individualized assessment.** Unless an applicant is disqualified from employment
35 in a particular position because of the applicant's criminal history information pursuant to
36 a specific provision of federal or state law, a public employer may reject an applicant in
37 whole or in part because of the applicant's criminal history information only after
38 considering the following:

39 A. Whether the criminal history information is directly related to the duties and
40 responsibilities of the position;

B. Whether the position offers the opportunity for the same or a similar offense to occur; and

C. The amount of time that has passed since the offense occurred.

§4726. Denial of employment on basis of criminal history

1. Notification. If a public employer denies an applicant a position solely or in part because of the applicant's criminal history information, the employer shall notify the applicant of the denial in writing and shall include the following:

A. The criminal history information that is the basis for the denial;

B. A copy of the criminal history information, if any; and

C. Any available process for contesting the denial.

§4727. Data collection

A public employer shall maintain a record of the number of applicants who applied for a position requiring a criminal background check; for whom a criminal background check was conducted; for whom a criminal background check revealed a conviction history; who were denied employment in whole or in part because of criminal history; and who had a criminal history and were hired. The records required by this section are public records pursuant to Title 1, section 402, subsection 3.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Administration - Human Resources 0038

Initiative: Appropriates funds on a one-time basis for the information technology and related costs of implementing requirements regarding the criminal history information of job applicants.

GENERAL FUND	2017-18	2018-19
All Other	\$0	\$398,952
GENERAL FUND TOTAL	\$0	\$398,952

SUMMARY

This amendment strikes and replaces the bill and is the majority report of the committee. It creates requirements regarding the inquiry into and consideration of the criminal history information of job applicants by public employers, including the following.

1. It prohibits a public employer from requesting criminal history information on an initial employment application form, except when a federal or state law prohibits persons with certain criminal histories from holding the position.

1 2. It allows a public employer to request criminal history information during an
2 interview or after the prospective employee has been determined otherwise qualified for
3 the position.

4 3. It prohibits a public employer from considering certain categories of criminal
5 history information, unless specifically required by federal or state law.

6 4. It requires a public employer who denies an employment applicant a position
7 solely or in part based on the applicant's criminal history information to provide the
8 applicant written information on the basis for the denial and any available process for
9 contesting the denial.

10 5. It requires a public employer to maintain statistical information regarding the
11 public employer's use of criminal background checks, including the number of denials of
12 applicants based on those criminal background checks. These records are public records
13 subject to Maine's Freedom of Access Act.

14 6. It designates as confidential any information pertaining to an employment
15 applicant's criminal history information that was obtained by a public employer in
16 conjunction with the hiring process and prohibits disclosure of such information by the
17 public employer except as otherwise specifically required by law.

18 The amendment includes an appropriations and allocations section.

19 **FISCAL NOTE REQUIRED**

20 **(See attached)**

**128th MAINE LEGISLATURE****LD 1566****LR 561(02)****An Act To Enact the Maine Fair Chance Employment Act**

Fiscal Note for Bill as Amended by Committee Amendment *A (H-705)*
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Potential State Mandate - Unfunded

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
Net Cost (Savings)				
General Fund	\$0	\$398,952	\$0	\$0
Appropriations/Allocations				
General Fund	\$0	\$398,952	\$0	\$0

State Mandates

Required Activity	Unit Affected	Local Cost
Creates requirements for public employers regarding the criminal history information of job applicants.	County Municipality School	Moderate statewide

The required local activities in this bill may represent a state mandate pursuant to the Constitution of Maine. If the bill does require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue, the state mandate provisions of the Constitution of Maine require either: (1) General Fund appropriations be provided to fund at least 90% of any additional necessitated local costs of the mandate; or (2) a Mandate Preamble be added to the bill and two-thirds of the members of each House vote to exempt the mandate from the funding requirement. If the bill does represent a state mandate and neither one of these actions occurs, the local units of government will not be required to implement the mandated activities.

Fiscal Detail and Notes

This bill provides a one-time appropriation of \$398,952 in 2018-19 to the Department of Administrative and Financial Services for the information technology and related costs of implementing the bill's requirements regarding the criminal history information of job applicants.

Additional costs to other state agencies and the Maine Community College System, the Maine Maritime Academy, the University of Maine System, the Finance Authority of Maine, the Maine State Housing Authority and the Maine Public Employees Retirement System to implement the requirements of this legislation can be absorbed within existing budgeted resources.