MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2087

H.P. 1488

House of Representatives, January 28, 2020

An Act Relating to Fair Chance in Employment

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Labor and Housing suggested and ordered printed.

ROBERT B. HUNT

R(+ B. Hunt

Clerk

Presented by Representative TALBOT ROSS of Portland.
Cosponsored by Senator CLAXTON of Androscoggin and
Representatives: CARNEY of Cape Elizabeth, EVANGELOS of Friendship, Senators:
DESCHAMBAULT of York, President JACKSON of Aroostook.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §600-A is enacted to read:

§600-A. Criminal history record information; employment application

- 1. **Definition.** As used in this section, unless the context otherwise indicates, "criminal history record information" has the same meaning as in Title 16, section 703, subsection 3.
 - **2. Initial employee application form.** Except as provided in subsection 3 or 4, an employer may not request criminal history record information on its initial employee application form. An employer may inquire about a prospective employee's criminal history record information during an interview or once the prospective employee has been determined otherwise qualified for the position.
- 3. Exceptions for initial employee application form. An employer may inquire about criminal convictions on an initial employee application form if:
 - A. The prospective employee is applying for a position for which any federal or state law or regulation or rule creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses and the questions on the initial employee application form are limited to the types of criminal offenses creating the disqualification;
 - B. The employer is subject to an obligation imposed by any federal or state law or regulation or rule not to employ a person, in either one or more positions, who has been convicted of one or more types of criminal offenses and the questions on the initial employee application form are limited to the types of criminal offenses creating the obligation;
 - C. The employer is required by federal or state law or regulation or rule to conduct a criminal history record check for the position for which the prospective employee is applying; or
 - D. The employer participates in a program that encourages employment of persons with criminal convictions.
- **4. Waiver.** An employer may inquire about criminal convictions on an initial employee application form pursuant to subsection 3 even if the federal or state law or regulation or rule creating an obligation for the employer not to employ a person who has been convicted of one or more types of criminal offenses also permits the employer to obtain a waiver that would allow the employer to employ such a person.
- 5. Statements. Except as provided in subsection 6, an employer may not state on an initial employee application form or advertisement or otherwise assert that a person with a criminal history may not apply or will not be considered for a position.
- 6. Exceptions for statements. An employer may state on an initial employee application form or advertisement or otherwise assert that a person with a criminal history may not apply or will not be considered for a position if:

- A. The prospective employee is applying for a position for which any federal or state law or regulation or rule creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses and the statement or assertion is limited to the types of criminal offenses creating the disqualification;
- B. The employer is subject to an obligation imposed by any federal or state law or regulation or rule not to employ a person, in either one or more positions, who has been convicted of one or more types of criminal offenses and the statement or assertion is limited to the types of criminal offenses creating the obligation; or
- C. The employer is required by federal or state law or regulation or rule to conduct a criminal history record check for the position for which the prospective employee is applying.
- 7. Opportunity to explain. If an employer inquires about a prospective employee's criminal history record information, the prospective employee, if still eligible for the position under applicable federal or state law or regulation or rule, must be afforded an opportunity to explain the information and the circumstances regarding any convictions, including post-conviction rehabilitation.
- **8. Penalty.** This section may be enforced pursuant to section 626-A. The civil action provided pursuant to section 626-A may be brought to enforce this section by or on behalf of a person affected by a violation of this section or by the Department of Labor on behalf of a person affected by a violation of this section. The Attorney General may investigate and bring an enforcement action relating to a complaint of employment discrimination under this section.
- Sec. 2. 26 MRSA §626-A, first ¶, as amended by PL 2019, c. 35, §2, is further amended to read:
- Whoever violates any of the provisions of <u>section 600-A</u>, sections 621-A to 623 or section 626, 628, 628-A, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation.

28 SUMMARY

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This bill prohibits an employer from requesting criminal history record information on an initial employee application form, subject to certain exceptions. An employer may inquire about a prospective employee's criminal history record information during an interview or once the prospective employee has been determined otherwise qualified for the position. The bill prohibits an employer from stating on an initial employee application form or advertisement or otherwise asserting that a person with a criminal history may not apply or will not be considered for a position, subject to certain exceptions. The bill provides that if an employer inquires about a prospective employee's criminal history record information, the prospective employee, if still eligible for the position under applicable federal or state law, must be afforded an opportunity to explain the information and the circumstances regarding any convictions, including post-conviction rehabilitation