

LEGISLATURE OF NEBRASKA  
ONE HUNDRED EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 367**

Introduced by Conrad, 46.

Read first time January 12, 2023

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to relating to labor; to amend section 48-202,
- 2 Reissue Revised Statutes of Nebraska; 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) Commission means the Equal Opportunity Commission;

9           (3) Employee means an individual employed by an employer;

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

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

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

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

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

8 Sec. 3. Section 48-202, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

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

17 (2) After an employer or employment agency makes a conditional offer  
18 of employment to an applicant, the employer or employment agency may ask  
19 the applicant to disclose, orally or in writing, information concerning  
20 the applicant's criminal record or history, including any inquiry on any  
21 employment application, if: ~~This section does not apply to any law~~  
22 ~~enforcement agency, to any~~

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

25 (i) A a criminal history record information check is required by  
26 federal or state law;  ~~or~~

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

31 (b) The inquiry or request for disclosure is limited to the types of

1 criminal offenses that the employer or employment agency is required to  
2 conduct a check for or that disqualify the applicant.

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

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

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

18 (4)(a) If the employer or employment agency intends to deny or  
19 disqualify an applicant a position of employment solely or in part  
20 because of the applicant's prior conviction of a crime, the employer or  
21 employment agency shall send a written pre-adverse action notice to the  
22 applicant prior to a final decision, which includes the following  
23 information:

24 (i) The conviction or convictions that are the basis for the denial  
25 or disqualification;

26 (ii) A copy of the conviction history report, if any; and

27 (iii) Examples of mitigation or rehabilitation evidence that the  
28 applicant may provide.

29 (b) An applicant who has been convicted of an offense which directly  
30 relates to the employment sought shall not be disqualified from the  
31 employment if the applicant can show evidence of mitigation or

1 rehabilitation and present fitness to perform the duties of such  
2 employment.

3 (c) An applicant shall have ten business days after issuance of the  
4 pre-adverse action notice to respond with mitigation or rehabilitation  
5 evidence or any information challenging the accuracy of the conviction or  
6 convictions. The employer or employment agency shall not fill the  
7 position until it makes a final employment decision based on an  
8 individualized assessment of the information submitted by the applicant  
9 and the factors recommended by the United States Equal Employment  
10 Opportunity Commission.

11 (d) Evidence of mitigation or rehabilitation may be established by:

12 (i) Evidence showing compliance with terms and conditions of  
13 probation or parole; or

14 (ii) Any other evidence of mitigation or rehabilitation and present  
15 fitness, including, but not limited to, letters of reference.

16 (e) If an employer or employment agency denies an applicant a  
17 position of employment solely or in part because of the applicant's prior  
18 conviction of a crime, the employer or employment agency shall send a  
19 written final adverse action notice with the following information:

20 (i) The final denial or disqualification;

21 (ii) Any appeal process;

22 (iii) A statement that the applicant may be eligible for other  
23 employment; and

24 (iv) The earliest date the applicant may reapply for a position of  
25 employment with the employer or employment agency.

26 (5)(a) The employer or employment agency shall retain application  
27 forms, records of employment, and other pertinent data required under  
28 subsection (4) of this section for a minimum of three years, including,  
29 but not limited to, all communications with the applicant. The employer  
30 or employment agency shall allow the commission access to such records to  
31 monitor compliance with this subsection. Any person who is aggrieved by

1 an employer's or employment agency's violation of subsection (4) of this  
2 section may contact the commission to report any problems, concerns, or  
3 suggestions regarding the implementation of, compliance with, and impact  
4 of the provisions of subsection (4) of this section, and the commission  
5 shall keep a record of such problem, concern, or suggestion. In addition,  
6 the commission shall conduct periodic reviews to assess compliance with  
7 this subsection. The commission shall review and investigate complaints  
8 and shall publish a quarterly report on such reviews and investigations.

9 (b) The employer or employment agency shall maintain a record of:

10 (i) The number of positions requiring background checks, and for  
11 those positions, a record of the number of applicants and the number of  
12 applicants who were provided a conditional offer;

13 (ii) The number of applicants for a position with a criminal record  
14 who were provided a pre-adverse action notice;

15 (iii) The number of applicants providing evidence of mitigation or  
16 rehabilitation;

17 (iv) The number of applicants who were provided a final adverse  
18 notice; and

19 (v) The number of applicants who were hired.

20 (c) Employers or employment agencies shall regularly conduct a  
21 confidential, anonymous survey of employees in employment positions in  
22 which background checks are not conducted, to determine the number of  
23 people with records who are hired.

24 (d) The commission may issue a fine of up to one thousand dollars  
25 for a first violation of the Fair Chance Hiring Act and shall provide  
26 counseling to the employer or employment agency to ensure future  
27 compliance. Subsequent violations are subject to fines of no more than  
28 two thousand dollars per violation. In addition, an individual may bring  
29 a civil action in any court of competent jurisdiction against the  
30 employer or employment agency violating the Fair Chance Hiring Act and  
31 upon prevailing, shall be entitled to such legal or equitable relief as

1 may be appropriate to remedy the violation including, but not limited to,  
2 damages, injunctive relief, and reasonable attorney's fees and costs. If  
3 an employer or employment agency does not maintain or retain adequate  
4 records documenting compliance or does not allow the commission  
5 reasonable access to such records, it shall be presumed that the employer  
6 or employment agency did not comply with subsection (5) of this section,  
7 absent clear and convincing evidence to the contrary.

8 (6) The provisions of the Fair Chance Hiring Act shall prevail over  
9 any other laws and rules which purport to govern the initiation,  
10 suspension, or termination of employment on the grounds of conviction of  
11 an offense. In deciding to deny, suspend, or terminate employment for a  
12 lack of good moral character or the like, the employer or employment  
13 agency may consider evidence of conviction of an offense but only in the  
14 same manner and to the same effect as provided for in the act. Nothing in  
15 the Fair Chance Hiring Act shall be construed to otherwise affect  
16 relevant proceedings involving the initiation, suspension, or termination  
17 of employment.

18 ~~(4) For purposes of this section:~~

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

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

30 Sec. 4. Original section 48-202, Reissue Revised Statutes of  
31 Nebraska, is repealed.