

A BILL

20- 642

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA



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To amend the Re-entry Facilitation Amendment Act of 2012 to assist in the successful reintegration of previously incarcerated persons into the community by removing barriers to gainful employment; to prohibit the consideration of a job applicant’s arrest record during the hiring process; to restrict an employer’s inquiry into a job applicant’s prior convictions until after the first interview; to establish penalties; and to give authority for enforcement to the Office of Human Rights.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Fair Criminal Record Screening Amendment Act of 2014”.

Sec. 2. The Re-entry Facilitation Amendment Act of 2012, effective June 15, 2013 (D.C. Law 19-319; codified in scattered cites in the D.C. Official Code), is amended as follows:

(a) Section 2 (D.C. Official Code § 24-1351) is designated as Title I, Part A. Limited Liability.

(b) Sections 3 through 7 (codified in scattered cites in the D.C. Official Code) are designated as Title II.

(c) A new Title I, Part B is added to read as follows:

“Part B. Fair Criminal Record Screening.

“Sec. 2a. Definitions.

“For the purposes of this part, the term:

1                   “(1) “Applicant” means any person considered or who requests to be considered  
2 for employment by an employer.

3                   “(2) “Arrest” means being apprehended, detained, taken into custody, held for  
4 investigation, or restrained by a law enforcement agency due to an accusation or suspicion that  
5 the person committed a crime.

6                   “(3) “Conviction” means any sentence arising from a verdict or plea of guilty  
7 or nolo contendere, including a sentence of incarceration, a suspended sentence, a sentence of  
8 probation or a sentence of unconditional discharge.

9                   “(4) “Employer” means any person, company, corporation, firm, labor  
10 organization, or association, including the District government, but not including the Courts, that  
11 employs more than 10 employees in the District of Columbia.

12                   “(5) “Employment” means any occupation, vocation, job, or work for pay,  
13 including temporary or seasonal work, contracted work, contingent work, and work through the  
14 services of a temporary or other employment agency; or any form of vocational or educational  
15 training with or without pay, where the physical location of the employment is in whole or  
16 substantial part, within the District of Columbia.

17                   “(6) “Inquiry” means any direct or indirect conduct intended to gather  
18 | ~~criminal history information information~~ from or about the applicant, candidate or employee,  
19 using any method, including application forms, interviews, and criminal history checks.

1           “(7) “Interview” means any direct contact by the employer with the applicant,  
2 whether in person or by telephone, to discuss the employment being sought or the applicants’  
3 qualifications.

4           “Sec. 2b. Inquiries into Certain Arrests, Accusations, and Convictions.

5           “(a) An employer may not make any inquiry about, or require an applicant to disclose or  
6 reveal, or require an applicant to disclose or reveal any arrest or criminal accusation made  
7 against the applicant, which is not then pending against the applicant and which did not result in  
8 a conviction.

9           “(b) An employer may not make any inquiry or require an applicant to disclose or reveal  
10 any criminal conviction until after -making a conditional offer of employment~~the first interview.~~

11           “(c) The prohibitions of this part shall not apply:

12           “(1) Where any federal or District law or regulation requires the consideration of  
13 an applicant’s criminal history for the purposes of employment; or

14           “(2) To any positions designated by the employer as part of a federal or District  
15 government program or obligation that is designed to encourage the employment of those with  
16 criminal histories.

17           “(d) Following the extension of a conditional offer of employment, an employer may  
18 only withdraw the conditional offer to an applicant or take an adverse action against an applicant  
19 for a legitimate business reason. The employer’s determination of a legitimate business reason  
20 must be reasonable in light of the following factors:

1                   “(1) The specific duties and responsibilities necessarily related to the employment  
2 sought or held by the person;

3                   “(2) The bearing, if any, of the criminal offense or offenses for which the person  
4 was previously convicted will have on his or her fitness or ability to perform one or more such  
5 duties or responsibilities;

6                   “(3) The time which has elapsed since the occurrence of the criminal offense or  
7 offenses;

8                   “(4) The age of the person at the time of the occurrence of the criminal offense;

9                   “(5) The frequency and seriousness of the criminal offense;

10                   “(6) Any information produced by the person, or produced on his behalf, in regard  
11 to his rehabilitation and good conduct since the occurrence of the criminal offense; and

12                   “(7) The public policy that it is beneficial generally for ex-offenders to obtain  
13 employment.

14                   “(f) If an applicant’s conditional offer is terminated or an adverse action is taken against  
15 an applicant on the basis of a criminal conviction, the applicant may request that the employer  
16 provide the applicant within 30 days:

17                   “(1) A copy or any and all records procured by the employer in consideration of  
18 the applicant or employee, including criminal records; and

19                   “(2) A written Statement of Denial, which:

20                   “(A) Articulates a legitimate business reason;

1                   “(B) Specifically demonstrates consideration of each of the factors set  
2 forth in subsection (d) of this section;

3                   “(C) Advises the applicant of his or her opportunity to file an  
4 administrative complaint with the Office of Human Rights.

5                   “(3) Failure to provide a written Statement of Denial upon request as set forth in  
6 this section shall create a rebuttable presumption that no legitimate business reasons exists for  
7 denying the applicant employment or taking an adverse action against an employee on the basis  
8 of a criminal conviction.”.

9                   “Sec. 2c. Filing a complaint with the Office of Human Rights; exclusive remedy.

10                  “(a) A person claiming to be aggrieved by a violation of this part may file an  
11 administrative complaint with the Office of Human Rights, in accordance with the procedures set  
12 forth in Title III of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38;  
13 D.C. Official Code §§ 2-1403.01 *et seq.*).

14                  “(b) Notwithstanding section 316 of the Human Rights Act of 1977, effective December  
15 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.16), the administrative remedies outlined  
16 in subsection (a) of this section are exclusive. A person claiming to be aggrieved by a violation  
17 of this part shall have no private cause of action in any court based on a violation of this part.

18                  “Sec. 2d. Penalties.

19                  “‘If the Commission on Human Rights finds that a violation of this part has occurred, the  
20 Commission shall impose the following penalties, of which half shall be awarded to the  
21 complainant:

1           “(a) For employers that employ 11 to 30 employees, a fine of up to \$1,000;

2           “(b) For employers that employ 31 to 99 employees, a fine of up to \$2,500;

3           “(c) For employers that employ 100 or more employees, a fine of up to a \$5,000.

4           “Sec. 2e. Reporting requirements.

5           “(a) The Office of Human Rights shall maintain data on the number of complaints filed  
6 pursuant to this part, demographic information on the complainants, the number of investigations  
7 it conducts, and the disposition of every complaint and investigation.

8           “(b) Data maintained by the Office of Human Rights pursuant to subsection (a) of this  
9 section shall be submitted to the Council of the District of Columbia annually, beginning 1 year  
10 from the effective date of the Fair Criminal Record Screening Amendment Act of 2014, as  
11 approved by the Committee on the Judiciary and Public Safety on May 28, 2014 (Committee  
12 print of Bill 20-642).”.

13           Sec. 3. Fiscal impact statement.

14           The Council adopts the fiscal impact statement in the committee report as the fiscal  
15 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,  
16 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(3)).

17           Sec. 4. Effective date.

18           This act shall take effect following approval by the Mayor (or in the event of veto by the  
19 Mayor, action by Council to override the veto), a 30-day period of Congressional review as  
20 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

**ENGROSSED ORIGINAL**

- 1 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02 (c)(1)), and publication in the District of
- 2 Columbia Register.