

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 470 (Delegate Marriott, *et al.*)
Health and Government Operations

Ex-Prisoners and Offenders - Equal Employment Opportunity

This bill adds discrimination in employment against an individual with an arrest or conviction record to the unlawful bases of employment discrimination under current State law.

Fiscal Summary

State Effect: Potential significant expenditure increase by the Human Relations Commission for enforcement purposes. The actual impact depends on the number of individuals with arrest or conviction records who may file a complaint with the commission. No effect on revenues.

Local Effect: Potential significant increase in expenditures due to the bill's provisions permitting a civil action to be filed in circuit courts for violations of the bill.

Small Business Effect: Minimal. The bill's provision's requiring private employers to submit a written explanation for denial of employment to individuals with an arrest or conviction record would not significantly increase small business expenses.

Analysis

Bill Summary: This bill amends the policy of the State of Maryland to assure all persons equal opportunity in receiving employment and in all labor management – union relations regardless of an arrest record or conviction record that is not directly related to employment.

“Arrest record” is defined as any information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor, or other offense by any law enforcement or military authority.

“Conviction record” is defined as any information indicating that an individual has been convicted of any felony, misdemeanor, or other offense, has been adjudicated delinquent, has been less than honorably discharged, or has been placed on probation, fined, imprisoned, placed on extended supervision, or paroled by any law enforcement or military authority.

The bill makes it unlawful for employers, employment agencies, and labor organizations, on the basis of an individual’s arrest or conviction record that is not directly related to employment: (1) to fail or refuse to hire, discharge, or refuse to refer for employment, any individual or otherwise discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment; (2) to limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual’s status as an employee; and (3) when absence of an arrest and conviction record is a bona fide occupational qualification for employment, print or cause to be printed, or publish any notice or advertisement relating to employment by the employer or membership in or any classification or referral for employment by the labor organization, or relating to any classification or referral for employment by the agency indicating any preference, limitation, specification, or discrimination based on the absence of an arrest or conviction record.

The bill authorizes employers to hire, employment agencies to classify or refer for employment, or for labor organizations controlling training programs, to admit or employ any individual on the basis of the individual’s absence of arrest or conviction record in those instances where the absence of such a record is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business enterprise.

Employers, employment agencies, labor organizations, and joint labor-management committees are not required to grant preferential treatment to any individual or group with an arrest or conviction record because of the number or percentage of such individuals in any community, State, section, or other area.

The bill requires an employer to take into account several specified factors in determining whether an arrest or conviction record is directly related to employment, or that the absence of an arrest and conviction record is a bona fide occupational requirement.

The bill authorizes a civil action in circuit court for unlawful employment practices related to the use of arrest and or conviction records, as long as: (1) the complainant initially files a complaint with the State Human Relations Commission against the respondent alleging an unlawful employment practice; and (2) at least 180 days have elapsed since the time of filing the complaint.

A complaining party may not commence a civil action that forms the basis of an order issued by the Human Relations Commission if a hearing on the record has been commenced by an administrative law judge. Administrative proceedings for the same unlawful employment practice may not continue after the beginning of the trial in a civil action. The commission may intervene in a civil action, if a court permits, to certify that the case is of importance to the general public.

The bill provides for compensatory damages in an amount equal to the total of future pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and nonpecuniary losses not to exceed:

- \$50,000 in the case of a respondent who employs from 15 to 100 employees;
- \$100,000 in the case of a respondent who employs from 101 to 200 employees;
- \$200,000 in the case of a respondent who employs from 201 to 500 employees; and
- \$300,000 in the case of a respondent who employs no fewer than 500 employees.

If a complainant seeks compensatory damages, any party to the action may demand a trial by jury and the court may not inform the jury of the compensatory damage award limitations mentioned above.

A consumer reporting agency which furnishes a consumer report for employment purposes must notify the consumer of the fact that public record information is being reported, provide the name and address of the person to whom the information is being reported, and at the time the public record information is being reported, notify the consumer of the provisions pertaining to arrest and conviction records. Consumer reporting agencies are also required to delete any information pertaining to any arrest of a consumer that did not result in a conviction prior to reporting any public record information to the user of the consumer report.

The bill removes any civil liability for claims of negligence for persons who hire an individual with an arrest record or conviction record that is not directly related to the individual employment. Immunity is not extended to acts or omissions that are malicious or grossly negligent.

Private employers must provide a written statement setting forth the reasons for denial of employment within 30 days of any request by any person previously arrested or convicted of one or more criminal offenses. Employers, officers, and agents of an employer who violate this requirement are guilty of a misdemeanor and subject to a fine in an amount from \$500 to \$1,000, imprisonment up to one year, or both.

Current Law: All the employment practices listed in the bill on the basis of race, color, religion, sex, age, national origin, sexual orientation, or disability are prohibited. Employers, employment agencies, labor organizations, and joint labor-management committees are not required to grant preferential treatment to any individual or group on the basis of an individual's membership in one of the aforementioned categories on account of any imbalance which may exist between the total number or percentage of these persons employed by an employer, referred or classified for employment by an employment agency, or admitted for membership in a labor organization in comparison with the total number or percentage of such persons in any community, State, section, or other area.

Consumer reporting agencies must notify a consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom the information is being reported if the agency furnishes a consumer report for employment purposes and reports items of information to consumers which are matters of public record and are likely to have an adverse affect upon a consumer's ability to obtain employment.

There is no immunity from civil liability for any employer of an individual with an arrest or conviction record.

There is no requirement for a private employer to provide a written statement setting forth the reasons for a denial of employment of an individual with an arrest or conviction record.

State Expenditures: The provisions of the bill that prohibit employers from discriminating on the basis of an individual's prior arrest or conviction record could significantly increase general fund expenditures for the Human Relations Commission (HRC). The extent of the impact cannot be reliably estimated because the bill's provisions are applicable to a potentially large and difficult population to measure, which includes all individuals with current convictions or who are under arrest, previously convicted or arrested individuals, and all individuals who may be convicted or arrested in the future.

The Department of State Police reports 308,100 arrests were made in 2001 and 318,200 in 2000; however, the total number of individuals in the State with arrest records is not

known. That number is substantial taking into account what appears to be an average of 300,000 arrests per year (although a certain percentage would be repeat offenders), and a relatively broad definition of arrest in the bill which would include any individual, questioned by police, held for investigation, or indicted.

HRC received 747 complaints of employment discrimination in fiscal 2002, of which 47% were allegations of prohibited practices on the basis of the complainant's race (African-American). According to the 2000 census, African-Americans over the age of 18 comprise 18% of the State's population or about 1.1 million individuals. The number of individuals with arrest or conviction records as defined in the bill, could approach or even exceed the adult African-American population. The magnitude of the impact on HRC's caseload is greatly dependent on the likelihood of an aggrieved individual to initiate a complaint with the agency. HRC advises that this population is very likely to use the agency's complaint process because a substantial portion of this group has the most difficulty finding employment. HRC's fiscal 2003 budget appropriation was \$2,523,253. The fiscal 2004 allowance is \$2,622,681.

Local Fiscal Effect: The Administrative Office of the Courts similarly advises that the potential increase in civil cases heard in circuit court as a result of the bill's provisions creating a civil cause of action could result in a substantial increase in local expenditures, the magnitude of which cannot be estimated for the reasons discussed above.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Human Relations Commission, Department of Budget and Management, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2003
ncs/jr

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