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FISCAL IMPACT REPORT

SPONSOR O'Neill/Baldonado **ORIGINAL DATE** 02/20/15
LAST UPDATED 03/16/15 **HB** _____
SHORT TITLE Criminal Offender Employment Eligibility **SB** 583/aSJC/aHBEC
ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See narrative	See narrative		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Related to SB 120.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 State Personnel Office (SPO)
 Office of the Attorney General (AGO)
 Department of Health (DOH)
 NM Sentencing Commission (NMSC)

SUMMARY

Synopsis of HBEC Amendment

House Business and Employment Committee amendment to Senate Bill 583 as amended by the SJC would add two new subsections, C and D to Section 28-2-3 NMSA 1978, Employment Eligibility Determination.

New subsection C would enable private employers only, after initial review of written applications for employment, to ask for written consent of the applicant for the potential employer to conduct a background check. The applicant's criminal record could then be taken into consideration in the hiring decision.

New subsection D would limit the entire Section, in terms of applicability, to only private employers with 30 employees or more.

The HBEC amendment leaves intact the SJC amendment.

Therefore, SB 583 as twice amended is less stringent than the original bill or the bill as amended by the SJC. It would no longer prohibit private employers with less than 30 employees to bar initial consideration of any applicant based solely on criminal record checks.

SB583 twice amended also would require the private employers with more than 30 employees to seek permission to do a background check on potential candidates after initial review of a written application.

However, such permission for a background check, for employers of any size or type, is already required by federal law under the Fair Credit Reporting Act (FCRA). Therefore, the HBEC amendment is less strict than federal law, which supercedes it, with regard to permission for a background check. Consequently, it may confuse employers.

This federal law also requires employers who have made adverse employment actions based on such background checks to report back to applicants regarding: whether he or she was rejected because of information in the report, with contact information for the company that provided the background check, and notice that the background check information may be disputed with the company that provided it.

See: http://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm

Synopsis of SJC Amendment

Senate Judiciary Committee amendment to Senate Bill 583 deletes original language in NMSA Section 28-2-1. The SJC amendment leaves intact the first half of the sentence in paragraph A that provides that employer shall not make an inquiry regarding a conviction on an initial application. But the SJC amendment strikes the second half of the sentence that provides an employer shall only consider a conviction after the applicant has been selected as a finalist.

SB 583 as amended would still bar employers, including private employers, from using such a prior conviction as an automatic bar to obtaining employment. They would also be prohibited from making an inquiry regarding a conviction on an initial application for employment.

Synopsis of Original Bill

Senate Bill 583 extends the provisions of the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978 to include private employers, as follows:

- Extends the prohibition against having a conviction of a felony or misdemeanor involving moral turpitude operate as an automatic bar to obtaining employment to private employers;
- Extends the prohibition against making an inquiry regarding a conviction on an initial application for employment to private employers;
- Requires that a private employer only take into consideration a conviction after an applicant has been selected as a finalist for a position. The bill extends the prohibitions “except as otherwise provided in the Criminal Offender Act.”

- Extends the prohibition against using, distributing or disseminating arrest records not followed by valid conviction and misdemeanor convictions not involving moral turpitude, in connection with an application for *any* employment, not just public employment.

The effective date of the Act is July 1, 2015.

FISCAL IMPLICATIONS

SB 583 includes no appropriation.

SB 583 may reduce costs stemming from recidivism by making it easier for ex-convicts to obtain and retain employment. “Banning the Box” statistics often state that maintaining employment is a main factor in reducing recidivism. The [All of Us or None](#) campaign has identified job discrimination as a main barrier to the successful return of convicts to their communities. It is difficult to measure the success of these initiatives and the impact SB 583 would have for New Mexico.

AOC analysis states:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to any actions brought against private employers to enforce the provisions of the Criminal Offender Employment Act, or potentially against a private employer for negligent hiring, by a plaintiff harmed by an employee who has previously been convicted of a crime.

SIGNIFICANT ISSUES

SB 583 would extend the provisions of the Criminal Offender Employment Act to private employers. It already pertains to public employers.

AOC analysis on a similar bill states:

While many states and municipalities have passed what are termed “ban the box” laws that apply to public employees, several states have recently passed laws extending prohibition against initial inquiry into criminal history to private employers. In both New Jersey and Illinois, where laws were signed in the summer of 2014, however, the prohibitions cover only those private employers with 15 or more employees. SB 120a contains no such limitation to extension of application of the law. Minnesota’s law also does not condition application of the law to the number of employees a private employer employs.

See, “Ban-the-Box Movement Goes Viral,” August 22, 2014 report from the Society for Human Resource Management:

<http://www.shrm.org/hrdisciplines/safetysecurity/articles/pages/ban-the-box-movement-viral.aspx>

SB 583 does not contain any penalty for failure of a private employer to act pursuant to the

provisions of the Criminal Offender Employment Act.

SPO analysis points out that: “Each private employer in the state that currently asks about a conviction at the start of the hiring process may need to change their practice and procedures to not ask about convictions until the final stages of the interview process.”

NMSC provided the following analysis:

Having any lifetime arrest dims the employment prospects more than any other employment-related characteristic. Given the large number of individuals arrested in the U.S. annually and the high lifetime prevalence of arrest (Brame, Turner, Paternoster, & Bushway, 2012), this is discouraging for those who become involved in the criminal justice system. The finding that even an arrest (whether it results in a conviction, jail or prison time) narrows employment prospects heightens the importance of diversion programs and reducing official reliance on the criminal justice system.

In 1998, Hawaii became the first state to adopt a fair chance law as applied to both public and private employment. Seven states – Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, and Rhode Island now prohibit private as well as public employers from posing questions about a job applicant's conviction history until later in the hiring process.

Fair-chance hiring policies increase employment of people with criminal records: Early results of such policies have been promising. For instance, after adopting a fair-chance hiring policy, the city of Durham, North Carolina, has increased its percentage of new hires with criminal records from less than 2.5 percent in 2011 to 15.5 percent in 2014. Minneapolis, Minnesota, has seen similarly positive results: Banning the box on job applications resulted in more than half of job seekers with criminal records being hired. And in Atlanta, Georgia, a fair-chance hiring policy led to people with criminal records making up fully 10 percent of all city hires between March and October 2013.

Additionally, some private employers—such as Target Corporation, one of the nation’s largest employers—have removed criminal history questions from their job applications.

RELATIONSHIP

SB 583 is related to SB 120 with much of the same language and intent.

OTHER SUBSTANTIVE ISSUES

DOH provided the following analysis:

SB 583 would extend the provisions of the Criminal Offender Employment Act to caregivers, health facilities, providers and agencies as it applies to private employment.

These entities are also covered under the Caregivers Criminal History Screening Act, Sections 29-17-2 through 29-17-5 NMSA, amended, which prohibits persons with specific felony convictions from employment as paid caregivers in order to protect the most vulnerable populations from harm. The Department of Health, Caregivers Criminal

History Screen Requirements (7.1.9 NMAC) specifies requirements for criminal history screening for paid caregivers that include federal and state background checks based on identifying information including fingerprints. The Caregivers Criminal History Screen Requirements identify specific felonies as disqualifying conditions of employment, offer due process rights to employment applicants with disqualifying conditions, and prohibit employment of disqualified persons.

The provisions of SB 583 do not conflict or interfere with the Caregivers Criminal History Screen Requirements. However, SB 583 would require private health care providers, agencies and facilities to consider applicants with felony convictions through the hiring process and not inquire about a conviction until the applicant has been selected as a finalist for the position. This requirement is consistent with the Caregivers Criminal History Screen Requirements for due process.

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