

STATE OF CONNECTICUT
EXECUTIVE CHAMBERS

M. JODI RELL
GOVERNOR

June 8, 2010

The Honorable Susan Bysiewicz
Secretary of the State
20 Trinity Street
Hartford, CT 06106

Dear Secretary Bysiewicz:

I hereby return without my signature House Bill 5207, *An Act Concerning Criminal Background Checks for Prospective State Employees*. This bill prohibits any executive branch agency, the judicial branch, the State Boards of Education and Higher Education or any quasi public agency from performing a criminal background check on any prospective employee until it has otherwise determined if the person is qualified for the job.

While worthy in its objective, this bill poses numerous obstacles in practice. And for all its obstacles, it is uncertain that any benefit will accrue to previously convicted applicants. Applicants are already protected by statutory provisions which prohibit the denial of employment solely based on a conviction. Also, there has been no specific evidence of discrimination by the state that the legislation attempts to address.

Current law provides that the State cannot discriminate against an individual solely on the basis of having been previously convicted of a crime. The State and its agencies may, however, deny employment based on a prior conviction only after considering (1) the nature of the crime and its relation to the job for which the person applied, (2) information pertaining to the degree of rehabilitation of the convicted person and (3) the time elapsed since the conviction. In addition, current law requires that if a conviction is used as the basis for rejection, such determination be in writing along with the reasons for denial and be sent by registered mail to the applicant.

On top of these existing requirements, this bill mandates that a state employer not inquire about past convictions until such prospective employee has been "deemed otherwise qualified" for the position. Such language is ambiguous and will certainly create difficulties in administration and application across the State. One agency may deem a person qualified on paper credentials alone while another will not consider a person qualified until after several interviews. Still yet, and most importantly, by some interpretations, deemed qualified may mean an offer of employment. Without such clarity provided in the law, such language is ripe for legal challenge by applicants. State


agencies would have to justify their construction and practical implementation of such phrase, leading to a potentially substantial burden to the State and costly expense to taxpayers.

Unique obstacles also arise in implementing such a vague and sweeping requirement across a diverse organization with more than 50,000 employees. These state employees serve in various capacities – some with managerial discretion and access to private and confidential information and others with direct customer contact. To have a “one size fits all approach” to all state positions is unworkable in the same way that the bill treats all convictions equally. The legislation makes no distinction between petty theft and violent crimes.

The statute should recognize such inherent distinctions in state positions and criminal convictions. Furthermore, the State should be allowed to use its judgment to consider whether a conviction is relevant to particular employment, as currently allowed. There are some positions for which the inability to inquire about a previous conviction upfront will lead to a waste of valuable state resources spent on interviewing and screening ineligible applicants.

New requirements concerning permissible parameters for inquiry into an applicant’s criminal record should be narrowly tailored for clear and sensible implementation by the State. Moreover, duly authorized hiring authorities ought to maintain their discretion to weigh the totality of the circumstances and make reasonable determinations to employ certain individuals, especially when responsibilities include significant personal judgment or access to highly sensitive information. For these reasons, pursuant to Section 15 of Article Fourth of the Constitution of the State of Connecticut and Article III of the Amendments thereto, I am returning this bill without my signature.

Sincerely,



M. Jodi Rell
Governor