

Effective 5/9/2017

Chapter 52
Reducing Barriers to Employment for Individuals with Criminal Records

Part 1
General Provisions

34-52-101 Title.

This chapter is known as "Reducing Barriers to Employment for Individuals with Criminal Records."

Enacted by Chapter 242, 2017 General Session

34-52-102 Definitions.

As used in this chapter:

- (1) "Applicant" means an individual who provides information to a public employer or private employer for the purpose of obtaining employment.
- (2)
 - (a) "Criminal conviction" means a verdict or finding of guilt after a criminal trial or a plea of guilty or nolo contendere to a criminal charge.
 - (b) "Criminal conviction" does not include an expunged criminal conviction.
- (3) "Juvenile adjudication" means:
 - (a) a finding by a court that the facts in a petition or criminal information alleging an individual committed an offense when the individual was younger than 18 years old have been proved; or
 - (b) an admission or plea of no contest under Section 80-6-306.
- (4) "Mental health professional applicant" means an individual who:
 - (a) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and
 - (b) provides information to a public employer or private employer for the purpose of obtaining employment that requires a license under Title 58, Chapter 60, Mental Health Professional Practice Act.
- (5)
 - (a) "Private employer" means a person who has one or more employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.
 - (b) "Private employer" does not include a public employer.
- (6) "Public employer" means an employer that is:
 - (a) the state or any administrative subunit of the state, including a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of state government;
 - (b) a state institution of higher education; or
 - (c) a municipal corporation, county, municipality, school district, special district, special service district, or other political subdivision of the state.

Amended by Chapter 16, 2023 General Session

Amended by Chapter 344, 2023 General Session

Part 2 Restrictions on Public Employers

34-52-201 Public employer requirements.

- (1) Except as provided in Subsections (3) and (6), a public employer may not:
 - (a) exclude an applicant from an initial interview because of:
 - (i) a past criminal conviction or juvenile adjudication; or
 - (ii) if the applicant is a mental health professional applicant, an arrest for an offense that occurred before the applicant was 18 years old;
 - (b) make an inquiry related to an applicant's expunged criminal or juvenile delinquency history;
 - (c) when making a hiring decision regarding a mental health professional applicant, consider:
 - (i) an arrest for an offense that occurred before the mental health professional applicant was 18 years old;
 - (ii) an arrest not followed by a criminal conviction or juvenile adjudication;
 - (iii) a juvenile adjudication; or
 - (iv) a past criminal conviction if:
 - (A) the sentence for the criminal conviction is terminated; and
 - (B) the mental health professional applicant was not incarcerated for the past criminal conviction or the mental health professional applicant's incarceration for the past criminal conviction ended at least three years before the day on which the mental health professional applicant applied for employment; or
 - (d) deny a mental health professional applicant employment based on a past criminal conviction that does not bear a direct relationship to the mental health professional applicant's ability to safely or competently perform the duties of employment.
- (2) A public employer excludes an applicant from an initial interview under Subsection (1) if the public employer:
 - (a) requires an applicant to disclose a criminal conviction or juvenile adjudication:
 - (i) on an employment application;
 - (ii) before an initial interview; or
 - (iii) if no interview is conducted, before making a conditional offer of employment; or
 - (b) requires an applicant who is a mental health professional applicant to disclose an arrest for an offense that occurred before the applicant was 18 years old:
 - (i) on an employment application;
 - (ii) before an initial interview; or
 - (iii) if no interview is conducted, before making a conditional offer of employment.
- (3) A public employer may not deny a mental health professional applicant employment that requires the mental health professional applicant to provide substance use treatment based on:
 - (a) the mental health professional applicant's participation in substance use treatment; or
 - (b) a past criminal conviction for a nonviolent drug offense if:
 - (i) the sentence for the criminal conviction is terminated; and
 - (ii)
 - (A) the mental health professional applicant was not incarcerated for the past criminal conviction; or
 - (B) the mental health professional applicant's incarceration for the past criminal conviction ended at least three years before the day on which the mental health professional applicant applied for employment.

- (4) An applicant seeking employment from a public employer may answer a question related to an expunged criminal or juvenile delinquency record as though the action underlying the expunged criminal or juvenile delinquency record never occurred.
- (5) Except as provided in Subsections (1) through (3), this section does not prevent a public employer from:
 - (a) asking an applicant for information about an applicant's criminal conviction or juvenile delinquency history during an initial interview or after an initial interview; or
 - (b) considering an applicant's criminal conviction or juvenile delinquency history when making a hiring decision.
- (6)
 - (a) Subsections (1) through (4) do not apply:
 - (i) if federal, state, or local law, including corresponding administrative rules, requires the consideration of an applicant's criminal conviction or juvenile delinquency history;
 - (ii) to a public employer that is a law enforcement agency;
 - (iii) to a public employer that is part of the criminal or juvenile justice system;
 - (iv) to a public employer seeking a nonemployee volunteer;
 - (v) to a public employer that works with children or vulnerable adults;
 - (vi) to the Department of Alcoholic Beverage Services created in Section 32B-2-203;
 - (vii) to the State Tax Commission;
 - (viii) to a public employer whose primary purpose is performing financial or fiduciary functions;or
 - (ix) to a public transit district hiring or promoting an individual for a safety sensitive position described in Section 17B-2a-825.
 - (b) Subsections (1)(c)(iv) and (1)(d) do not apply to a criminal conviction for:
 - (i) a violent felony as defined in Section 76-3-203.5; or
 - (ii) a felony related to a criminal sexual act under Title 76, Chapter 5, Part 4, Sexual Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act.
 - (c) Subsections (1)(a)(ii), (1)(c), (1)(d), and (3) apply to a person under contract with a public employer.

Amended by Chapter 115, 2023 General Session

Amended by Chapter 344, 2023 General Session, (Coordination Clause)

Amended by Chapter 344, 2023 General Session

Part 3

Applicants for Private Employment

34-52-301 Permitted applicant response regarding expunged criminal or juvenile delinquency history.

An applicant seeking employment from a private employer may answer a question related to an expunged criminal or juvenile delinquency record as though the action underlying the expunged criminal or juvenile delinquency record never occurred.

Amended by Chapter 115, 2023 General Session

34-52-302 Private employer requirements when hiring a mental health professional.

- (1) Except as provided in Subsection (4), a private employer may not exclude a mental health professional applicant from an initial interview because of:
 - (a) an arrest for an offense that occurred before the mental health professional applicant was 18 years old;
 - (b) a juvenile adjudication; or
 - (c) an expunged criminal offense.
- (2) A private employer excludes a mental health professional applicant from an initial interview under Subsection (1) if the private employer requires the mental health professional applicant to disclose an arrest for an offense that occurred before the mental health professional applicant was 18 years old, a juvenile adjudication, or an expunged criminal offense:
 - (a) on an employment application;
 - (b) before an initial interview; or
 - (c) if no interview is conducted, before making a conditional offer of employment.
- (3) Except as provided in Subsections (1) and (2), this section does not prevent a private employer from:
 - (a) asking a mental health professional applicant for information about the mental health professional applicant's criminal conviction history during an initial interview or after an initial interview; or
 - (b) considering a mental health professional applicant's criminal conviction history when making a hiring decision.
- (4) Subsections (1) and (2) do not apply:
 - (a) if federal, state, or local law, including corresponding administrative rules, requires the consideration of an applicant's criminal conviction history;
 - (b) to a private employer that is part of the criminal or juvenile justice system;
 - (c) to a private employer seeking a nonemployee volunteer;
 - (d) to a private employer that works with children or vulnerable adults; or
 - (e) to a private employer whose primary purpose is performing financial or fiduciary functions.

Enacted by Chapter 344, 2023 General Session