

# 1st Sub. H.B. 192

## FORMER OFFENDER EMPLOYMENT AMENDMENTS

Representative **Norman K. Thurston** proposes the following amendments:

1. *Page 1, Lines 14 through 16:*

- 14           ▶       when hiring a mental health professional, prohibits a public {~~or private~~} employer  
15    from:  
16           •       considering certain arrests or criminal convictions;

2. *Page 2, Lines 38 through 39:*

- 38       {~~ENACTS:~~  
39       ~~—— 34-52-302, Utah Code Annotated 1953 }~~

3. *Page 6, Line 150 through Page 8, Line 218:*

- 150       {~~Section 3. Section 34-52-302 is enacted to read:~~  
151       ~~—— 34-52-302. Private employer requirements when hiring a mental health~~  
152       ~~professional.~~  
153       ~~—— (1) Except as provided in Subsections (3) and (5), a private employer may not:~~  
154       ~~—— (a) exclude a mental health professional applicant from an initial interview because of~~  
155       ~~a past criminal conviction, juvenile adjudication, or an arrest that occurred when the mental~~  
156       ~~health professional applicant was younger than 18 years old;~~  
157       ~~—— (b) make an inquiry related to a mental health professional applicant's expunged~~  
158       ~~criminal history;~~  
159       ~~—— (c) when making a hiring decision regarding a mental health professional applicant,~~  
160       ~~consider:~~  
161       ~~—— (i) an arrest described in Subsection (1)(a);~~  
162       ~~—— (ii) an arrest not followed by a criminal conviction or juvenile adjudication;~~  
163       ~~—— (iii) a juvenile adjudication;~~  
164       ~~—— (iv) a past criminal conviction if the mental health professional applicant was not~~  
165       ~~incarcerated for the criminal conviction and the mental health professional applicant's sentence~~  
166       ~~for the criminal conviction terminates; or~~  
167       ~~—— (v) a past criminal conviction if the mental health professional applicant was~~  
168       ~~incarcerated for the criminal conviction and at least three years have passed since the later of:~~  
169       ~~—— (A) the day on which the incarceration for the criminal conviction terminates; or~~  
170       ~~—— (B) the day on which the incarceration for a supervision violation related to the~~  
171       ~~criminal conviction terminates; or~~

172 ~~—— (d) deny a mental health professional applicant employment based on a past criminal~~  
173 ~~conviction that does not bear a direct relationship to the mental health professional applicant's~~  
174 ~~ability to safely or competently perform the employment requirements.~~  
175 ~~—— (2) A private employer excludes a mental health professional applicant from an initial~~  
176 ~~interview under Subsection (1)(a) if the private employer:~~  
177 ~~—— (a) requires the mental health professional applicant to disclose, on an employment~~  
178 ~~application, a criminal conviction, a juvenile adjudication, or an arrest described in Subsection~~  
179 ~~(1)(a);~~  
180 ~~—— (b) requires the mental health professional applicant to disclose, before an initial~~  
181 ~~interview, a criminal conviction, a juvenile adjudication, or an arrest described in Subsection~~  
182 ~~(1)(a); or~~  
183 ~~—— (c) if no interview is conducted, requires the mental health professional applicant to~~  
184 ~~disclose, before making a conditional offer of employment, a criminal conviction, a juvenile~~  
185 ~~adjudication, or an arrest described in Subsection (1)(a).~~  
186 ~~—— (3) Notwithstanding Subsection (1)(d), a private employer may not deny a mental~~  
187 ~~health professional applicant employment that requires the mental health professional applicant~~  
188 ~~to provide substance use treatment based on:~~  
189 ~~—— (a) the mental health professional applicant's participation in substance use treatment;~~  
190 ~~—— (b) a past criminal conviction for a nonviolent drug offense if the mental health~~  
191 ~~professional applicant was not incarcerated for the criminal conviction and the mental health~~  
192 ~~professional applicant's sentence for the criminal conviction terminates; or~~  
193 ~~—— (c) a past criminal conviction for a nonviolent drug offense if the mental health~~  
194 ~~professional applicant was incarcerated for the criminal conviction and at least three years have~~  
195 ~~passed since the later of:~~  
196 ~~—— (A) the day on which the incarceration for the criminal conviction terminates; or~~  
197 ~~—— (B) the day on which the incarceration for a supervision violation related to the~~  
198 ~~criminal conviction terminates;~~  
199 ~~—— (4) Except as provided in Subsections (1) through (3), this section does not prevent a~~  
200 ~~private employer from:~~  
201 ~~—— (a) asking a mental health professional applicant for information about the mental~~  
202 ~~health professional applicant's criminal conviction history during an initial interview or after an~~  
203 ~~initial interview; or~~  
204 ~~—— (b) considering a mental health professional applicant's criminal conviction history~~  
205 ~~when making a hiring decision.~~  
206 ~~—— (5) (a) Subsections (1) through (3) do not apply:~~  
207 ~~—— (i) if federal, state, or local law, including corresponding administrative rules, requires~~  
208 ~~the consideration of an applicant's criminal conviction history;~~  
209 ~~—— (ii) to a private employer that is part of the criminal or juvenile justice system;~~  
210 ~~—— (iii) to a private employer seeking a nonemployee volunteer;~~  
211 ~~—— (iv) to a private employer that works with children or vulnerable adults; or~~

212 ~~—— (v) to a private employer whose primary purpose is performing financial or fiduciary~~  
213 ~~functions:~~  
214 ~~—— (b) Subsections (1)(c)(iv), (1)(c)(v), and (1)(d) do not apply to a criminal conviction~~  
215 ~~for:~~  
216 ~~—— (i) a violent felony as defined in Section 76-3-203.5; or~~  
217 ~~—— (ii) a felony related to a criminal sexual act under Title 76, Chapter 5, Part 4, Sexual~~  
218 ~~Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act. }~~