

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. }~~