



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 56\*

131st General Assembly

(As Reported by S. State & Local Government)

**Reps.** Schuring and Slesnick, Antonio, Becker, Bishoff, Brenner, Boyd, Dever, Driehaus, Fedor, Hood, Leland, Lepore-Hagan, Maag, Reece, Retherford, Ruhl, Thompson, Sheehy, Amstutz, Ashford, Blessing, Boyce, Buchy, Craig, Derickson, DeVitis, Ginter, Green, Grossman, Hackett, Howse, T. Johnson, Kuhns, McClain, S. O'Brien, Patmon, Patterson, Pelanda, Perales, Ramos, Rogers, Ryan, Sears, R. Smith, Stinziano, Sweeney, Sykes, Young, Rosenberger

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## BILL SUMMARY

- Prohibits a public employer from including on any employment application form any question concerning an applicant's criminal background.
- Prohibits a felony conviction from being used against an officer or employee when a public employer is undertaking certain employment practices, unless the conviction occurs while the officer or employee is employed in the civil service.
- Removes the bar against sealing a conviction record when the victim is 16 or 17 years old under specified circumstances.
- Specifies that independent providers that provide certain aide or nursing services are not public employees of the state or any political subdivision of the state.

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## CONTENT AND OPERATION

### Questions concerning an applicant's criminal background

The bill prohibits a public employer from including on any form for application for employment with the public employer any question concerning an applicant's criminal background. The bill specifies that this provision does not prohibit a public

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\* This analysis was prepared before the report of the Senate State & Local Government Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

employer from including on any form for application for employment with the public employer a statement notifying an applicant of any provision of Ohio or federal law that disqualifies an individual with a particular criminal history from employment in a particular position.

The bill defines "public employer" as a state agency or political subdivision of the state. A "state agency" is any organized body, office, agency, institution, or other entity established by the laws of Ohio for the exercise of any function of government. And the bill defines a "political subdivision" as a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state. The bill may not apply to municipal corporations because of the home rule authority granted to them under the Ohio Constitution. Similarly, the bill may not apply to a charter county that has adopted, in its charter, municipal home rule authority as permitted under the Ohio Constitution. (see **COMMENT**, below).<sup>1</sup>

## **Use of felony conviction in employment practices**

### **Resuming a position in the classified civil service**

Generally, civil service is divided into the unclassified service and the classified service. An employee who holds a position in the classified service and who is appointed to a position in the unclassified service retains the right to resume the position and status held in the classified service immediately before the employee's appointment under certain circumstances. But the employee forfeits the right to resume a position in the classified service upon transfer to a different agency, or when the employee is removed from the position in the unclassified service due to specific misconduct, such as dishonesty or drunkenness, or for conviction of a felony.

For an employee to forfeit the right to resume a position in the classified service due to a felony conviction, the bill requires that the conviction occur while the employee is employed in the civil service. This limitation applies when:

(1) A person holds a position in the classified service of the state and is appointed to a position in the unclassified service;<sup>2</sup>

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<sup>1</sup> R.C. 9.73.

<sup>2</sup> R.C. 124.11(D)(3).



(2) The board of county commissioners appoints a person who holds a certified position in the classified service within the county department of job and family services to the position of administrator, which is in the unclassified service;<sup>3</sup>

(3) The Administrator of Workers' Compensation appoints a person who holds a certified position in the classified service within the Bureau of Workers' Compensation to a position of unclassified service within the Bureau;<sup>4</sup>

(4) An appointing officer appoints a person who holds a certified position in the classified service within the Department of Developmental Disabilities to a position in the unclassified service within the Department;<sup>5</sup>

(5) The Director of Youth Services appoints a person who holds a certified position in the classified service within the Department of Youth Services to a position as a managing officer in the Department, which is in the unclassified service.<sup>6</sup>

(6) The Director of Rehabilitation and Correction appoints a person who holds a position in the classified service within the Department of Rehabilitation and Correction to a position in the unclassified service within the Department.<sup>7</sup>

### **Other employment practice limitations**

The bill limits when the pay or position of an officer or employee in the classified service of the state, counties, civil service townships, cities, city health districts, general health districts, and city school districts may be reduced, or when the officer or employee may be fined, suspended, or removed, or when longevity is reduced or eliminated. Under current law, these actions may be taken for a felony conviction. The bill adds that the felony conviction must occur while the officer or employee is employed in the civil service. And for the felony conviction to trigger immediate forfeiture of a person's status as a classified employee in any public employment, the conviction must occur while the person is employed in the civil service.

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<sup>3</sup> R.C. 329.021(C).

<sup>4</sup> R.C. 4121.121(B)(2).

<sup>5</sup> R.C. 5123.08.

<sup>6</sup> R.C. 5139.02.

<sup>7</sup> R.C. 5120.38, 5120.381, and 5120.382.



The bill also requires that to use a felony conviction as a separate basis for reducing pay or position, suspending, or removing an officer or employee, the conviction must occur while the officer or employee is employed in the civil service.<sup>8</sup>

### **Sealing a conviction record when the victim is 16 or 17 years old**

The bill expands current law governing sealing of conviction records to allow a person to have sealed records of convictions of an offense where the victim of the offense was 16 or 17 when the offense is a first degree misdemeanor or a felony, the offense is not a conviction of nonsupport or contributing to nonsupport of dependents, and the offender meets the other criteria for the sealing of a record. Current law bars sealing a conviction record for such offenses when the victim of the offense is under 18.<sup>9</sup>

Under continuing law, a court order to seal the record of a person's conviction restores the person to all rights and privileges not otherwise restored by termination of the sentence or community control sanction or by final release on parole or post-release control. In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, subject to limited exceptions, a person may be questioned only with respect to convictions and bail forfeitures not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered.<sup>10</sup>

### **Public employee status of independent providers**

The bill specifies that an independent provider is not an employee of the state or any political subdivision of the state due to being an independent provider or any actions taken to become or remain an independent provider. Thus, it appears that an independent provider is not a public employee for purposes of collective bargaining or for public employee benefits such as health care or retirement.

The bill defines an independent provider as an individual who personally provides the following services under the Medicaid program and is not employed by, under contract with, or affiliated with another entity that provides the services:

--The following aide services: home health aide services available under the Medicaid program's home health services benefit; home care attendant services available under certain Medicaid waiver programs; personal care aide services,

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<sup>8</sup> R.C. 124.34.

<sup>9</sup> R.C. 2953.36(F).

<sup>10</sup> R.C. 2953.33, not in the bill.

homemaker/personal care services, and community inclusion services available under a Medicaid waiver program covering home and community based services (HCBS);

--The following nursing services: nursing services available under the Medicaid program's home health services benefit, private duty nursing services, and nursing services available under a Medicaid waiver program covering HCBS.<sup>11</sup>

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## COMMENT

The bill may not apply to municipal corporations. Similarly, the bill may not apply to a charter county that has adopted, in its charter, authority to exercise powers vested by the constitution or laws of Ohio in municipalities, i.e. has adopted municipal home rule authority.<sup>12</sup> Generally, under the Home Rule Amendment to the Ohio Constitution,<sup>13</sup> municipal employment matters are considered to be matters of local self-government. The Ohio Supreme Court has upheld the right of chartered municipal corporations to adopt their own civil service ordinances under their powers of local self-government<sup>14</sup> if the charters clearly and expressly state the intent to supersede and override general state statutes.<sup>15</sup> And the Court has ruled that nonchartered municipal corporations may adopt civil service ordinances under their powers of local self-government that supersede state statutes if the statutory requirements are substantive, rather than procedural, in nature.<sup>16</sup> A nonchartered municipal corporation must comply with state statutory requirements that are procedural in nature.

But in some form, a city must provide for a civil service that meets the standards of Article XV, Section 10 of the Ohio Constitution.<sup>17</sup> That provision requires that appointments and promotion in the civil service of the state, counties, cities, and city

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<sup>11</sup> R.C. 5164.44

<sup>12</sup> See Ohio Constitution, art. X, sec. 3.

<sup>13</sup> Ohio Constitution, art. XVIII, sec. 3.

<sup>14</sup> Ohio Constitution, art. XVIII, secs. 3 and 7.

<sup>15</sup> *State ex rel. Regetz v. Cleveland Civil Serv. Comm.*, 72 Ohio St.3d 167 (1995).

<sup>16</sup> *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma*, 61 Ohio St.2d 375 (1980). In this case, Parma, a noncharter municipal corporation, adopted an ordinance that mandated the compensation of municipal employees who were on leaves of absence while in the armed forces, even though the ordinance was at variance with state law.

<sup>17</sup> *State ex rel. Bardo v. Lyndhurst*, 37 Ohio St.3d 106 (1988).



school districts be based upon merit and fitness. There is, however, no such requirement for villages (a municipal corporation with a population of less than 5,000).<sup>18</sup>

Although the courts have established tests with respect to a municipal corporation exercising its home rule authority, the tests are not always consistently applied. It is unclear how a court would rule with regard to a municipal corporation's (or a charter county's) home rule authority as it relates to the bill.

The following provision of the Ohio Constitution deals with employment and occasionally has been held to overrule a municipal corporation's home rule authority: "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power."<sup>19</sup> The interplay between this constitutional provision and a municipal corporation's home rule authority has been very fact-specific, often depending upon the issue and the court's sophistication in the area of municipal home rule.<sup>20</sup>

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## HISTORY

ACTION	DATE
Introduced	02-10-15
Reported, H. Commerce & Labor	06-24-15
Passed House (91-1)	09-30-15
Reported, S. State & Local Gov't	---

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<sup>18</sup> *State ex rel. Giovanello v. Lowellville*, 139 Ohio St. 219 (1942).

<sup>19</sup> Ohio Constitution, art. II, sec. 34.

<sup>20</sup> See, e.g., *Lima v. State*, 122 Ohio St.3d 155 (2009) (residency requirements) and *City of Cincinnati v. Correll*, 141 Ohio St. 535 (1943) (barber shop operation hours).

