



# Ohio Legislative Service Commission

## Final Analysis

Paul Luzzi

### Sub. H.B. 56

131st General Assembly  
(As Passed by the General Assembly)

**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

**Sens.** Brown, Hottinger, Yuko, Burke, Eklund, Seitz

**Effective date:** March 23, 2016

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## ACT 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 act 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 act specifies that this provision does not prohibit a public employer from including on any application form 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 act defines "public employer" as a state agency or political subdivision. 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 act 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 act may not apply to municipal corporations because of the home rule authority granted to them under the Ohio Constitution. Similarly, the act may not apply to a charter county that has adopted, in its charter, municipal home rule authority as permitted under the Ohio Constitution.<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 types of misconduct, including a felony conviction.

For an employee to forfeit the right to resume a position in the classified service due to a felony conviction, the act 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>

(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>

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

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

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



(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 act 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. To take these actions when a felony conviction is involved, the act requires that the felony conviction must occur while the officer or employee is employed in the civil service, rather than for any felony as under former law. 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.

The act 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>

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

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

<sup>6</sup> R.C. 5139.02(B).

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

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



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

The act expands the 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. Former law barred sealing a conviction record for such offenses when the victim of the offense was under 18.<sup>9</sup>

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

The act 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 act 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, 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>10</sup>

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

<sup>10</sup> R.C. 5164.44



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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	12-09-15
Passed Senate (32-1)	12-09-15
House concurred in Senate amendments (91-1)	12-09-15

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