



# State of Tennessee

## PUBLIC CHAPTER NO. 813

SENATE BILL NO. 2440

By Kyle, Harris

Substituted for: House Bill No. 2442

By Gilmore, Favors, Shaw, Hardaway, Stewart, Akbari, Armstrong, Love, Powell, Towns,  
Camper, Turner

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 50, Part 1, relative to applicants for state employment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 50, Part 1, is amended by adding the following language as a new section:

(a) If an employer announces a position for employment that is a covered position, the announcement shall include the following statement:

### NOTICE

**This position requires a criminal background check. Therefore, you may be required to provide information about your criminal history in order to be considered for this position.**

(b) If an employer announces a position for employment that is not a covered position, the employer shall not inquire about an applicant's criminal history on the initial application form. An employer may inquire about an applicant's criminal history after the initial screening of applications. If an employer inquires about an applicant's criminal history, the employer shall provide the applicant with an opportunity to provide an explanation of the applicant's criminal history to the employer.

(c) In considering an applicant with a criminal history for a position for employment other than a covered position, an employer shall consider:

- (1) The specific duties and responsibilities of the position;
- (2) The bearing, if any, that an applicant's criminal history may have on the applicant's fitness or ability to perform the duties required by the position;
- (3) The amount of time that has elapsed since the applicant's conviction or release;
- (4) The age of the applicant at the time of the commission of each offense;
- (5) The frequency and seriousness of each offense;
- (6) Any information produced by the applicant regarding the applicant's rehabilitation and good conduct since the occurrence of an offense; and
- (7) Any public policy considerations with respect to the benefits of employment for applicants with criminal histories.

(d) Except as otherwise required or expressly permitted by state or federal law, a criminal history obtained by an employer shall be confidential and not subject to the open records law, compiled in title 10, chapter 7.

(e) An employer shall be held harmless and not liable for any damages arising from the employer's failure or refusal to hire an applicant for any covered position or other position based on information obtained by the employer from an inquiry into the criminal history of the applicant.

(f) As used in this section, unless the context otherwise requires:

(1) "Covered position" means a position for employment for which a criminal background check is required under federal law or for which the commission of an offense is a disqualifying event for employment under federal or state law; and

(2) "Employer":

(A) Means the state and any agency, authority, branch, bureau, commission, corporation, department, or instrumentality of the state; and

(B) Does not include a contractor, subcontractor, a political subdivision of the state, the department of education, the state board of education, or the Tennessee bureau of investigation.

SECTION 2. Employers are not required to replace existing application forms in circulation after the effective date of this act for the purpose of ensuring that the application forms comply with Section 1 of this act until all existing application forms are exhausted.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

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PASSED: March 23, 2016

  
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RON RAMSEY  
SPEAKER OF THE SENATE

  
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BETH HARWELL, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 14<sup>th</sup> day of April 2016

  
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BILL HASLAM, GOVERNOR