

Legislative Analysis



CERTIFICATE OF EMPLOYABILITY FOR PRISONERS

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House Bill 5216

Sponsor: Rep. Klint Kesto

House Bill 5217

Sponsor: Rep. John Walsh

House Bill 5218

Sponsor: Rep. Harvey Santana

Committee: Commerce

Complete to 1-21-14

A SUMMARY OF HOUSE BILLS 5216-5218 AS INTRODUCED 1-9-14

House Bill 5216 would allow the Department of Corrections to award a "certificate of employability" to a prisoner who the department determines is a suitable candidate for employment on release. The bill would amend the Corrections Code. (More detail is provided later in the summary.)

House Bill 5217 would allow a certificate of employability to be introduced as evidence of a person's due care in hiring, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the certificate was issued. Further, if a claim against an employer requires proof of employer negligence in hiring an individual, a certificate of employability would provide immunity for the employer. This is an amendment to the Revised Judicature Act and would apply in actions based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death. In each case, an employer would have to know of the certificate at the time of the alleged negligence or other fault.

If an individual with a certificate subsequently demonstrated that he or she was a danger to individuals or property or was convicted of, or pleaded guilty to, a felony, the employer who retained the individual would not be liable in a civil action requiring negligence unless a preponderance of the evidence established that the person with hiring and firing responsibility had actual knowledge that the individual was dangerous or had committed a felony, and that person was willfull in retaining the individual as an employee.

House Bill 5218 would specify that if a judgment of criminal prosecution is used by a licensing board or agency as evidence in determining an individual's "good moral character," that board or agency would also be required to consider the individual's certificate of employability from the Department of Corrections as evidence in the determination. The bill would amend Public Act 381 of 1974, which specifies that a judgment of guilt in a criminal prosecution or a judgment in a civil action cannot be used,

in and of itself, by a licensing board or agency as proof of the lack of good moral character, but can be used as evidence in any such determination.

Certificate of Employability

Under House Bill 5216, the Department of Corrections would have to consider all of the following in determining whether to award a certificate of employability:

- The criminal history of the prisoner.
- The institutional history of the prisoner, including any record of institutional misconduct, whether the prisoner had successfully completed counseling or other programming provided by the department or a contractor, and whether the prisoner had obtained a GED (general education development certificate) or other educational degree.
- The job skills of the applicant, including institutional work record.
- Other relevant factors.

A certificate could only be issued within 30 days before the prisoner was released from a correctional facility. The department would have to revoke the certificate if the prisoner committed a criminal offense before release and could revoke the certificate for institutional misconduct or if the department otherwise decided the prisoner was not a proper candidate for a certificate.

The department also could revoke a certificate after a prisoner had been released upon determining that the individual had been convicted of a criminal offense after release or that the prisoner was not a proper candidate for a certificate.

The department would have to provide an individual who had been released with an opportunity for a hearing before revoking a certificate. Revocation would be effective when the individual was notified.

It would be a misdemeanor for an individual to intentionally state or otherwise represent that he or she had a valid certificate of employability knowing the statement or representation was false. The penalty would be imprisonment for not more than 93 days and/or a fine of not more than \$500.

The revocation of a certificate would not affect the right of an employer to rely on its validity unless the employer knew before the individual was employed that the certificate was fraudulent or had been revoked.

FISCAL IMPACT:

House Bill 5216 would have an indeterminate fiscal impact on the state and on local units of government. The issuing of certificates could impose costs on the state Department of Corrections, and the requirement for the department to hold hearings before revoking certificates could also impose costs. If individuals intentionally state or represent that they have valid certificates when they do not have valid certificates, they would be found

in violation and would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or both. To the extent there are violators, there could be increased costs on local correctional systems. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

The bills would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA).

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