

CERTIFICATE OF EMPLOYABILITY FOR PRISONERS

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House Bill 5216 (substitute H-2)
Sponsor: Rep. Klint Kesto

House Bill 5217 (substitute H-3)
Sponsor: Rep. John Walsh

House Bill 5218 (as introduced)
Sponsor: Rep. Harvey Santana

Committee: Commerce
Complete to 4-16-14

A SUMMARY OF HOUSE BILLS 5216-5218 AS REPORTED FROM COMMITTEE

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 provide certain protections and immunities to employees who hire or retain individuals with certificates of employability. It would amend the Revised Judicature Act. (More detail is provided later in the summary.)

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," then 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 (HB 5216)

Under House Bill 5216, when a prisoner is released, the Department of Corrections would issue to that prisoner documents regarding all of the following:

- The criminal history of the prisoner.
- The institutional history of the prisoner, which shall include all of the following:
 - Any record of institutional misconduct.
 - Whether the prisoner had successfully completed programing provided by the department or a person or entity under contract with the department.
 - Whether the prisoner obtained a GED (general education development) certificate or other educational degree.

- The prisoner's institutional work record.
- Other information considered relevant by the department.

In addition to the documents listed above, the department would also issue a certificate of employability to prisoners who qualify. In order for a prisoner to be eligible for a certificate of employability, all of the following must apply to that prisoner:

- The prisoner successfully completed a career and technical education course.
- The prisoner received no major misconducts during the two years immediately preceding release.
- The prisoner received no more than three minor misconducts during the two years immediately preceding release.

A certificate of employability could only be issued within 30 days of the prisoner's release from a correctional facility. The certificate would be valid for four years after its date of issuance unless otherwise revoked by the department.

The department would revoke a certificate if:

- The prisoner commits any criminal offense during the 30-day period before release. (The department also could revoke a certificate for institutional misconduct during that period.)
- If following release from prison, the individual commits a felony.

Prior to a certificate being revoked, the department must offer the individual an opportunity to have a hearing regarding the revocation of the certificate. The hearing must take place within 60 days following an individual being convicted for a criminal offense or within 60 days of the department's determination that the individual is no longer a proper candidate for a certificate. The revocation takes effect when the individual is notified of the revocation.

Under the bill, it would be a misdemeanor for an individual to intentionally state or otherwise represent that he or she has 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.

The department would be obligated to, upon request, confirm whether a certificate of employability has been issued to a named individual and whether the certificate issued to that individual is valid at the time of inquiry and at the department's response to that inquiry.

The department would not be civilly liable for damages based upon its decision to issue or deny a certificate to any prisoner, or for revoking or failing to revoke a certificate of employability issued to any prisoner.

Employer Protections (HB 5217)

Under House Bill 5217, a certificate of employability could 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 by disregarding a prior criminal conviction, a certificate of employability would conclusively establish that the employer did not act negligently in hiring the individual. The bill would amend 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 for the provision to apply.

If an individual with a certificate subsequently demonstrated that he or she is 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 been convicted of or pleaded guilty to a felony, and that person was willfull in retaining the individual as an employee.

The bill does not relieve an employer from a duty or requirement established in another law concerning a background check or verification that an individual is qualified for a position, and does not relieve the employer of liability from failure to comply with any such law.

Also, the bill specifies that it "does not create any affirmative duty or otherwise alter an employer's obligation to or regarding employees."

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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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.