



TO: The Honorable Members of the Senate Judiciary Committee

FROM: Alex Halper, Director, Government Affairs

DATE: March 27, 2018

RE: Concerns with S.B. 1043

On behalf of the PA Chamber of Business and Industry, I write to express our concerns with S.B. 1043 and urge you to oppose this bill, which the committee is scheduled to consider today.

Current law provides that employers may only consider a job applicant's criminal record if it relates to the individual's suitability for the position for which he or she is applying. We understand S.B. 1043 seeks to apply this standard to current employees. While we appreciate the intent of the sponsor, and have supported other measures to promote reentrant employment, we must oppose this particular approach, given potential unintended consequences and associated risk on employers.

The protections provided in this bill appear to apply both to employees who had a felony or misdemeanor conviction prior to employment, as well as current employees. For employees in the former category, this legislation could complicate the ability of an employer to discipline or discharge an employee who willfully failed to disclose criminal history information for which they were lawfully asked by the employer during the hiring process.

This bill could also impact employers with employees in the latter category. For example, an employer may place an employee on leave following an arrest and pending an investigation – particularly for a violent crime or if the employee works with children or other vulnerable populations. This reasonable practice would be prohibited under this act because the employment action is pre-conviction. Even if the employee is ultimately convicted of a violent crime, the burden is on the employer to demonstrate that the 'suitability' standard applies.

This legislation essentially establishes that individuals arrested or convicted of a crime are a new protected class. While employers could attempt to defend an employment action, the burden is on them to prove the applicability of the suitability clause – a potential tall order, particularly for small businesses with limited personnel and resources.

Again, we've supported efforts, such as "clean slate" legislation, to connect reentrants with employment and thereby improve their lives and avoid recidivism. Unfortunately S.B. 1043 goes too far and we must respectfully urge you to oppose. Please contact Alex Halper at 717 720-5471 or ahalper@pachamber.org with any questions or to discuss.