



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

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### **H.B. 187**

132nd General Assembly  
(As Introduced)

Rep. Dever

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#### **BILL SUMMARY**

- Generally prohibits an employer from requesting an applicant's Social Security number, birthdate, or driver's license number before making the applicant an offer of employment.
- Permits an employer to request the restricted information for certain purposes, including obtaining a criminal records check, credit check, or driving record verification; verifying prior employment with that employer; and determining eligibility to participate in specified government services or programs.
- Prohibits an employer from using information about an applicant obtained during the initial selection process for a purpose other than determining whether the employer will make an offer of employment and from providing that information to a person other than the employer, and establishes exceptions to those prohibitions.
- Requires an employer to maintain a policy regarding the retention, disposition, access, and confidentiality of information collected about an applicant, requires an applicant to have the opportunity to review the policy, and prohibits an employer from retaining information regarding a nonhired applicant for more than two years.
- Allows an aggrieved applicant to sue an employer for damages for violating any of the bill's provisions.

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## CONTENT AND OPERATION

### Collection of applicant information before making an offer of employment

The bill generally prohibits an employer from requesting an applicant's Social Security number, birthdate, or driver's license number before making the applicant an offer of employment.<sup>1</sup> A person is an "employer" subject to the bill's provisions if the person employs 15 or more employees within Ohio for each working day in each of 20 or more calendar weeks in the current or preceding calendar year.<sup>2</sup>

#### Exceptions

However, the bill permits an employer to request the restricted information before making an offer of employment for the purpose of taking certain actions during the employee selection process. The "employee selection process" is defined as the series of decisions that results in an employer making an offer of employment to an applicant and includes advertising a position, reviewing applications, interviewing applicants, and selecting an applicant to make an offer of employment.<sup>3</sup> During that process, the bill permits an employer to request the restricted information to:

- Obtain a criminal records check of an applicant;
- Obtain an applicant's credit history, subject to the requirements of the federal Fair Credit Reporting Act;
- Obtain the applicant's driving record from the Bureau of Motor Vehicles;
- Conduct a review of the employer's internal records to determine whether the applicant was previously employed by the employer or previously applied for employment with the employer (but the bill restricts an employer who requests the information for this purpose to requesting only the information necessary to conduct that review).

The bill also permits an employer to request the restricted information to provide to a government entity to determine an applicant's eligibility for or participation in a

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<sup>1</sup> R.C. 4177.02(A).

<sup>2</sup> R.C. 4177.01(B).

<sup>3</sup> R.C. 4177.01(A).



government service, benefit, or program that requires the information to be collected on or before the day on which an employer makes an offer of employment to an applicant.<sup>4</sup>

In circumstances in which an employer requests the information before offering employment, the employer is prohibited from taking action before receiving the applicant's written consent. And, if the employer has requested the information, the employer must not fail to take action for the reason specified.<sup>5</sup>

## **Use of applicant information**

Under the bill, an employer may not use information about an applicant obtained during the initial selection process for a purpose other than to determine whether the employer will make the applicant an offer of employment, including for the purpose of marketing, profiling, or reselling. The bill further prohibits an employer from providing information obtained about an applicant through the initial selection process to a person other than the employer. The "initial selection process" is the first decision in the employee selection process in which the employer uses information received in a record from an applicant to determine whether the applicant will be considered for a second review for the position for which the applicant is applying. A "record" has the same meaning as in the Uniform Commercial Code, and means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.<sup>6</sup>

Regardless of the previous restrictions, an employer may provide information about an applicant to a person other than the employer if any of the following apply:

- The information is required by law.
- The information is required by a government entity to determine eligibility for or participation in a government service, benefit, or program.
- The applicant applies for another position with the employer.

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<sup>4</sup> R.C. 4177.02(B) and (C).

<sup>5</sup> R.C. 4177.02(D) and (E).

<sup>6</sup> R.C. 4177.01(C) and (D) and 4177.03(A), by reference to R.C. 1301.201, not in the bill.



- The applicant is employed by the employer and the information is used for a performance review or a promotion application, and the employer uses that information for other similarly situated applicants.<sup>7</sup>

### **Applicant information retention policy**

An employer is required, under the bill, to maintain a policy regarding the retention, disposition, access, and confidentiality of any information collected about an applicant during the initial selection process. The employer must provide an applicant with an opportunity to review the policy before requiring the applicant to provide information to the employer as part of the initial selection process.

The bill prohibits an employer from retaining any information about an applicant collected during the initial selection process for longer than two years after the date on which the applicant provides the information, if the employer does not hire the applicant during that time.<sup>8</sup>

### **Civil action**

The bill allows an aggrieved applicant to sue an employer if the employer violates any of the bill's provisions regarding the collection of applicant information, the use of applicant information, or the establishment of an applicant information retention policy. An aggrieved applicant may sue in a court of competent jurisdiction and, if the court finds that a violation has occurred, the employer is liable to the individual for the amount of actual damages sustained by the individual as a result of the employer's violation.<sup>9</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-24-17

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<sup>7</sup> R.C. 4177.03(B).

<sup>8</sup> R.C. 4177.04.

<sup>9</sup> R.C. 4177.05.

