

FISCAL NOTE
LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2023-24		FY 2024-25	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See Below		See Below	

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 367 would adopt the Fair Chance Hiring Act (Act). The bill would prohibit employers and employment agencies from requesting criminal histories from applicants as outlined in the bill.

LB 367 requires employers who disqualify applicants solely or in part because of a prior conviction to send a written pre-adverse notice to the applicant prior to a final decision to include specific information as outlined in the bill. Applicants have ten days to respond to such notifications with mitigation or rehabilitation evidence or any information challenging the accuracy of the conviction. If employers maintain the denial of employment, employers then must send a written final determination, information about any appeals process, a statement that the applicant may be eligible for other employment, and the earliest date that an applicant may reapply for the position. The employer is required to retain all records and make these available to the Equal Opportunity Commission to monitor compliance of the Act.

The bill further requires that employers regularly conduct confidential surveys in positions where background checks are not conducted to determine the number of people with criminal history records who are hired. Furthermore, the Equal Opportunity Commission may issue a fine of up to \$1000 for the first violation of the Act and provide counseling to the employer or employment agency to ensure future compliance. Fines raise to \$2000 for subsequent violations. Additionally, individuals may file civil action against any employer violating the Act, and upon prevailing, would be entitled to equitable relief.

The Department of Administrative Services (DAS) anticipates a need for additional staff time to track the data as required by the bill. However, DAS is unable to predict the exact number of positions that would be impacted by these requirements. It is assumed that the modifications to the current process may be performed by the current resources and staffing currently available thus the fiscal impact is indeterminable. Additionally, there is a risk of fines or legal fees if DAS were not in compliance but these costs cannot be reasonably estimated.

The University of Nebraska System anticipates a need for two additional FTEs annually to comply with the legislation. The two new human resources positions would each be paid \$60,000 in salary annually and \$18,000 annually for the associated benefits cost for a total cost of \$156,000 annually. Cost would be distributed as follows:

Fund Type	Percentage by Fund Type	Estimated Expenditures FY 2023-24	Estimated Expenditures FY 2024-25
General Fund	38%	\$59,436	\$59,436
Cash Fund	23%	\$35,256	\$35,256
Federal Fund	5%	\$7,020	\$7,020
Revolving Fund	35%	\$54,288	\$54,288
Total	100%	\$156,000	\$156,000

The Equal Opportunity Commission cannot determine the fiscal impact as it is difficult to determine the number of complaints that the Commission may need to monitor and/or investigate which may necessitate a need for additional staff. It may be assumed that the cost of investigations may be offset from violations of the Act; however, this cost is also indeterminable. As there is not a similar federal law under the prevue of the Commission that would be reimbursed, funding needs for personnel would have to be met by the state's general funds.

The Department of Health and Human Services (DHHS) would be required to maintain records as prescribed by the bill. DHHS would also be required to conduct anonymous surveys of employees for which background checks were not conducted to determine the number of people with records who are hired.as outlined in the bill. DHHS anticipates that existing staff would absorb these requirements. However, should additional duties be significant, an FTE may be requested.

There is no basis to disagree with these estimates.

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 367	AM:	AGENCY/POLT. SUB: Department of Administrative Services – Risk Management Division (065)
REVIEWED BY: Joe Wilcox	DATE: 01/27/2023	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the Nebraska Department of Administrative Services – Risk Management Division estimate of Potential, but Indeterminate Fiscal Impact to the Agency from LB 367.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 367	AM:	AGENCY/POLT. SUB: Nebraska Equal Opportunity Commission (67)
REVIEWED BY: Joe Wilcox	DATE: 01/20/2023	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the Nebraska Equal Opportunity Commission (NEOC) estimate of Potential, but Indeterminate Fiscal Impact to the Agency from LB 367.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 367	AM:	AGENCY/POLT. SUB: University of Nebraska (051)
REVIEWED BY: Joe Wilcox	DATE: 01/23/2023	PHONE: (402) 471-4178
COMMENTS: No basis to disagree with the University of Nebraska estimate of Potential Fiscal Impact to the Agency from LB 367.		

Please complete ALL (5) blanks in the first three lines.

2023

LB⁽¹⁾ 367

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Department of Administrative Services (DAS) – State
Personnel Division

Prepared by: ⁽³⁾ Dan Birdsall Date Prepared: ⁽⁴⁾ 01-17-2023 Phone: ⁽⁵⁾ 402-471-4106

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
REVOLVING FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

LB 367 Adopts the Fair Chance Hiring Act and prohibits employers and employment agencies from requesting criminal history as detailed in the bill. The bill proposed that an employer may only ask an applicant to disclose his/her criminal record or history after a conditional offer has been received. Further, the employer can only ask for disclosure if the position is one that requires a check by federal or state law, or federal or state law specifically would disqualify an applicant with a criminal background. Any inquiry or request for disclosure would be limited to the types of offenses the employer is required to conduct or that would disqualify the applicant.

LB 367 does not prevent an employer from preparing or delivering an application that states a criminal history record information is required by federal or state law or the employer’s policy. Nor does it prevent an employer from conducting a criminal history record information check after determining the applicant meets the minimum employment qualifications.

It does, however, require the employer who disqualifies an applicant solely or in part because of a prior conviction to send a written pre-adverse action notice to the applicant with a copy of the history report, examples of mitigation or rehabilitation evidence may be provided. An applicant then has ten business days to respond with the evidence or any information challenging the history’s accuracy. If such evidence shows the applicant fit to perform the duties of the employment, the applicant shall not be disqualified. The employer is not to fill the position until the assessment is decided. Any final adverse action is to be provided in writing with specified information as detailed in the bill. The bill further requires such records to be retained for a minimum of three years and be made available to the Equal Opportunity Commission. The employer is required to maintain data regarding the number of positions requiring background checks, the number of applicants provided a pre-adverse action notice, the number of applicants providing evidence, the number of applicants provided a final adverse notice, and the number of applicants hired.

The bill also requires employers to regularly conduct confidential surveys of employees in position where background checks are not conducted to determine the number of people with records who are hired. The Equal Opportunity Commission is authorized to issue fines of up to \$1,000 for a first violation and up to \$2,000 for subsequent violations. An individual may bring a civil action against the employer, and upon prevailing, shall be entitled to legal or equitable relief.

Current DAS practice includes running a background check for every applicant to the SOS Temporary Employee Program because every applicant is eligible for the candidate pool. Central HR runs a background check once a conditional offer is made as a policy standard.

LB 367, as proposed, would require the incorporation of the additional required written notices. There is also additional staff time required to create and track the data as required by the bill, as well as potential time delays in the hiring process due to the notification requirements and appeal process.

It is difficult to predict the number of positions that would be impacted by these requirements, making the fiscal impact indeterminable. It is assumed the modifications to the current process could be implemented and performed within the current resources and staffing currently available. Additionally, there is a risk of fines or legal fees if the Department of Administrative Services (DAS) State Personnel were not in compliance, but those costs cannot be reasonably estimated.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Benefits.....			_____	_____
Operating.....			_____	_____
Travel.....			_____	_____
Capital outlay.....			_____	_____
Aid.....			_____	_____
Capital improvements.....			_____	_____
TOTAL.....			_____	_____

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2023

LB⁽¹⁾ 367

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Equal Opportunity Commission

Prepared by: ⁽³⁾ Kathleen Bogenreif Date Prepared: ⁽⁴⁾ 1/19/2023 Phone: ⁽⁵⁾ 402-471-4061

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2023-24</u>		<u>FY 2024-25</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
OTHER FUNDS	_____	_____	_____	_____
TOTAL FUNDS	=====	=====	=====	=====

Explanation of Estimate:

It is difficult to estimate the number of complaints this law change may generate and the amount of work required. As a result, it is difficult to determine the fiscal impact. The agency has received inquiries based on criminal history and is able to take charges under the Nebraska Fair Employment Practice Act if the person believes it is also related to a protected status (such as race). In those instances, the charge is dual filed with the EEOC. Per our contract with the EEOC, we would be paid for the investigation.

Because there is not a similar federal law, there would be no opportunity of generating any revenue for complaints relative to this law. It is clear the agency is capable of conducting the type of investigation the bill may generate, but it is impossible to estimate the volume of complaints filed and their fiscal impact. The time spent to investigate, review compliance and produce reports will reduce our revenue since these investigations will take time away from charges that are dual-filed with EEOC or HUD and for which we are paid federal funds. Moving forward there could a need for additional state funding.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023-24</u>	<u>2024-25</u>
	<u>23-24</u>	<u>24-25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Benefits.....	_____	_____	_____	_____
Operating.....	_____	_____	_____	_____
Travel.....	_____	_____	_____	_____
Capital outlay.....	_____	_____	_____	_____
Aid.....	_____	_____	_____	_____
Capital improvements.....	_____	_____	_____	_____
TOTAL.....	=====	=====	=====	=====

State Agency OR Political Subdivision Name:⁽²⁾ University of Nebraska System
 Prepared by:⁽³⁾ Chris Kabourek Date Prepared:⁽⁴⁾ 01/20/2023 Phone:⁽⁵⁾ (402) 472-7102

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	FY 2023 - 24		FY 2024 - 25	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>59,436.00</u>	<u>0.00</u>	<u>59,436.00</u>	<u>0.00</u>
CASH FUNDS	<u>35,256.00</u>	<u>0.00</u>	<u>35,256.00</u>	<u>0.00</u>
FEDERAL FUNDS	<u>7,020.00</u>	<u>0.00</u>	<u>7,020.00</u>	<u>0.00</u>
OTHER FUNDS	<u>54,288.00</u>	<u>0.00</u>	<u>54,288.00</u>	<u>0.00</u>
TOTAL FUNDS	<u>156,000.00</u>	<u>0.00</u>	<u>156,000.00</u>	<u>0.00</u>

Explanation of Estimate:

LB 367 would change an employer's responsibility for applicant background checks and hiring applicants with a criminal history.

The bill would create additional responsibilities for employers that include the following: (1) Notifying and educating employees about the law and requirements; (2) Reviewing and revising current policies related to criminal history inquiries; (3) Reviewing and revising application materials; (4) Increased notice requirements; (5) Increased record-keeping requirements; and (6) Required employee surveys.

Based on these additional responsibilities, the University of Nebraska System would require two new human resources positions to complete this work annually. We have used a \$60,000 salary and 30% associated employee benefit cost to estimate the cost for these positions.

The bill does not include an effective date, so we used July 1, 2023.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2023 - 24</u>	<u>2024 - 25</u>
	<u>23 - 24</u>	<u>24 - 25</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
	<u>2</u>	<u>2</u>	<u>120,000.00</u>	<u>120,000.00</u>
	<u>0</u>	<u>0</u>		
Benefits.....			<u>36,000.00</u>	<u>36,000.00</u>
Operating.....				
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			<u>156,000.00</u>	<u>156,000.00</u>