



Vote NO on House Bill 4837

PO Box 588
Rochester, IL 62563
800-232-0169, 217-498-2649
F: 866-230-4415
idc@iadtc.org, www.iadtc.org

PRESIDENT
William K. McVisk
Tressler LLP, Chicago

PRESIDENT ELECT
Nicole D. Milos
AAIS, Lisle

1st VICE PRESIDENT
Laura K. Beasley
Baker Sterchi Cowden & Rice
LLC, Belleville

2nd VICE PRESIDENT
Terry A. Fox
Flaherty & Youngerman, P.C.,
Chicago

SECRETARY/TREASURER
Tracy E. Stevenson
Law Offices of Tracy E.
Stevenson, P.C., Chicago

DIRECTORS
Denise Baker-Seal
Brown & James, P.C., Belleville
C. Wm. Busse, Jr.
Busse, Busse & Grasse, P.C.,
Chicago
Adam C. Carter
Esp Kreuzer Cores LLP, Chicago

James P. DuChateau
HeplerBroom LLC, Chicago
Donald Patrick Eckler
Pretzel & Stouffer, Chartered,
Chicago
John Eggum
Foran Glennon Palandech Ponzi
& Rudloff, P.C., Chicago

Steve Grossi
Bruce Farrel Dorn & Associates,
Chicago

John P. Heil, Jr.
Heyl, Royster, Voelker & Allen,
P.C., Peoria

David A. Herman
Giffin, Winning, Cohen &
Bodewes, P.C., Springfield
Seth Lamden
Neal, Gerber & Eisenberg LLP,
Chicago

Mark J. McClenathan
Heyl, Royster, Voelker & Allen,
Rockford

Gregory W. Odum
Baker Sterchi Cowden & Rice
LLC, Belleville

Donald J. O'Meara, Jr.
Lindsay, Pickett & Postel, LLC,
Chicago

Jaime Padgett
Uber, Chicago

Untress Quinn, Sr.
Sandberg Phoenix & von
Gontard, P.C., O'Fallon

Kimberly A. Ross
Ford & Harrison, LLP, Chicago

Britta Sahlstrom
SmithAmundsen, LLC, Chicago

Patrick W. Stufflebeam
Tressler LLP, Edwardsville

John F. Watson
Craig & Craig, LLC, Mattoon

Jennifer A. Winking
Scholz, Loos, Palmer, Siebers &
Duesterhaus, Quincy

EXECUTIVE DIRECTOR

Sandra J. Wulf, CAE, IOM
Rochester

The Illinois Association of Defense Trial Counsel, an organization whose members are committed to protecting and improving civil justice in Illinois, opposes the Employee Background Fairness Act (“EBFA”) (HB 4837), as the proposed bill: (1) is vague and unworkable; (2) creates additional liability for employers, when sufficient legal protections already exist; and (3) will have foreseeable negative ramifications.

The EBFA provides that an employer shall not refuse to hire and may not terminate an individual because of the individual’s criminal history unless: (1) the individual has at least one conviction; and (2) there is a direct relationship between at least one of the convictions and the job sought. A “direct relationship” is defined as “the nature of the criminal conduct for which the applicant was convicted has a direct bearing on his or her fitness or ability to perform one or more of the duties or responsibilities related to the employment in question, and does not include whether a criminal history has a bearing on an applicant’s character or trustworthiness generally.” *Id.* at § 5. This amorphous definition may leave employers subject to liability for determinations of what constitutes a “direct relationship.”

For example, a theft conviction would likely have a “direct relationship” with a cashier’s position. However, there are less clear scenarios. What if a convicted murderer applies for a position that deals with using dangerous tools and equipment around other individuals? Could the employer consider the conviction to be directly related to the specific job since the job involves using dangerous objects? What if a man has been convicted of multiple sex crimes against women, and he must communicate and be in close contact with women? Obviously, sexual violence has no direct relationship to any legitimate job. However, because the man has to communicate and be in close contact with women, is there a direct relationship between the conviction and his job? Because liability could be imposed against employers for acting in a reasonable manner when answering these less than clear cut questions, HB 4837 is too ill-defined to pass.

Furthermore, individuals with criminal convictions are already afforded protections in Illinois, under the Job Opportunities for Qualified Applicants Act (“JOQAA”), which prohibits employers from considering or asking about a potential employee’s criminal history until the applicant is deemed qualified for the job by the employer. 820 ILCS 75/1 *et seq.* Under the JOQAA, employers are subject to civil penalties imposed by the Department of Labor. 820 ILCS 75/20.

While individuals with criminal histories are not considered to be a protected class under Title VII, federal law protects individuals in protected classes with criminal convictions. *See Bd. Of Trustees So. Ill. Univ. v. Knight*, 163 Ill.App.3d 289 (1987). Similarly, Title VII prohibits disparate impact discrimination, meaning that employers are prohibited from using criminal records against prospective and current employees that result in a negative impact on a protected class of individuals. *Id.* *See also* 42 U.S.C. § 2000e-2(k)(1)(A)(i).

The mechanism for an employer to raise the conviction issue is cumbersome and prolonged and involves multiple notices and responses. This bureaucratic construct is forced on a private employer, whose primary goal is to speedily find an employee – not to conduct investigations.

Finally, when workplace shootings occur, victims’ families invariably sue the employer. OSHA is currently insisting that there by a general duty clause, requiring employers to provide a safe workplace free from gun violence. Accordingly, the civil immunity provision in the proposed statute fails to go far enough to protect employers from suits after a co-worker is injured by an ex-felon. Plaintiffs’ attorneys will likely assert that an OSHA violation provides a cause of action, and the “willful and wanton” exception to immunity is a gross negligence standard. The criminal history report and other paperwork the employer was required to complete will likely be used to establish that the employer failed to act according to the risk of harm.

For all of these reasons, HB 4837 should be defeated.

Past Presidents: Royce G. Rowe, James Baylor, Jack E. Horsley, John J. Schmidt, Thomas F. Bridgman, William J. Voelker, Jr., Bert M. Thompson, John F. Skeffington, John G. Langhenry, Jr., Lee W. Ensel, L. Bow Pritchett, John F. White, R. Lawrence Storms, John P. Ewart, Richard C. Valentine, Richard H. Hoffman, Ellis E. Fuqua, John E. Guy, Leo M. Tarpey, Willis R. Tribler, Alfred B. LaBarre, Patrick E. Maloney, Robert V. Dewey, Jr., Lawrence R. Smith, R. Michael Henderson, Paul L. Price, Stephen Corn, Rudolf G. Schade, Jr., Lyndon C. Molzahn, Daniel Formeller, Gordon R. Broom, Clifford P. Mallon, Anthony J. Tunney, Douglas J. Pomatto, Jack T. Riley, Jr., Peter W. Brandt, Charles H. Cole, Gregory C. Ray, Jennifer Jerit Johnson, Stephen J. Heine, Glen A. Amundsen, Steven M. Puszis, Jeffrey S. Hebrank, Gregory L. Cochran, Rick Hammond, Kenneth F. Werts, Anne M. Oldenburg, R. Howard Jump, Aleen R. Tiffany, David H. Levitt, Troy A. Bozarth, R. Mark Mifflin, Michael L. Resis, Bradley C. Nahrstadt