

ENROLLED

**CITY OF BALTIMORE
ORDINANCE _____
Council Bill 13-0301**

Introduced by: Councilmembers Mosby, Scott, Stokes, Clarke, Reisinger, Middleton, President
Young, Councilmembers Henry, Cole, Curran, Spector
Introduced and read first time: December 5, 2013
Assigned to: Judiciary and Legislative Investigations Committee
Committee Report: Favorable with amendments
Council action: Adopted
Read second time: March 10, 2014

AN ORDINANCE CONCERNING

“Ban the Box” – Fair Criminal-Record Screening Practices

FOR the purpose of ~~prohibiting certain employers from making certain inquiries about, or taking certain actions because of, certain arrests or accusations;~~ prohibiting certain employers from conducting a criminal-record check or otherwise inquiring into an applicant’s criminal record until ~~after the conclusion of an initial interview~~ a conditional offer of employment has been extended; providing for certain exceptions; providing for administrative and judicial review of and remedial relief for violations; prohibiting reprisals against persons who allege a violation of these prohibitions; defining certain terms; imposing certain penalties; providing for a special effective date; and generally relating to the establishment of fair criminal-record screening practices for employers in the City of Baltimore.

BY adding

Article 11 - Labor and Employment
Section(s) 14-1 through 14-16, to be under the new subtitle designation,
“Subtitle 14. Fair Criminal-Record Screening Practices ”
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 11. Labor and Employment

SUBTITLE 14. FAIR CRIMINAL-RECORD SCREENING PRACTICES

PART 1. DEFINITIONS; GENERAL PROVISIONS

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.
Underlined italics indicate matter added to the bill by amendment after printing for third reading.

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1 **§ 14-1. DEFINITIONS.**

2 (A) *IN GENERAL.*

3 IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

4 (B) *APPLICANT.*

5 “APPLICANT” MEANS ANY INDIVIDUAL WHO IS BEING CONSIDERED OR WHO REQUESTS TO
6 BE CONSIDERED ~~BY~~ FOR EMPLOYMENT IN THE CITY OF BALTIMORE BY A COVERED
7 EMPLOYER.

8 (C) *CONVICTION.*

9 (1) *IN GENERAL.*

10 “CONVICTION” MEANS ANY SENTENCE ARISING FROM A VERDICT OR PLEA OF GUILTY
11 OR NOLO CONTENDERE.

12 (2) “CONVICTION” INCLUDES:

13 (I) A SENTENCE OF INCARCERATION OR FINE; AND

14 (II) A SUSPENDED SENTENCE.

15 (D) *COVERED EMPLOYER; EMPLOYER.*

16 “COVERED EMPLOYER” OR “EMPLOYER” MEANS ANY PERSON THAT EMPLOYS 10 OR MORE
17 FULL-TIME EQUIVALENT EMPLOYEES IN THE CITY OF BALTIMORE.

18 (E) *EMPLOYMENT.*

19 (1) *IN GENERAL.*

20 “EMPLOYMENT” MEANS:

21 (I) ANY WORK FOR PAY; AND

22 (II) ANY FORM OF VOCATIONAL OR EDUCATIONAL TRAINING, WITH OR WITHOUT
23 PAY.

24 (2) *INCLUSIONS.*

25 “EMPLOYMENT” INCLUDES:

26 (I) CONTRACTUAL, TEMPORARY, SEASONAL, OR CONTINGENT WORK; AND

27 (II) WORK THROUGH THE SERVICES OF A TEMPORARY OR OTHER EMPLOYMENT
28 AGENCY.

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1 (F) *INCLUDES; INCLUDING.*

2 “INCLUDES” OR “INCLUDING” MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF
3 LIMITATION.

4 (G) *INQUIRY.*

5 “INQUIRY” MEANS ANY DIRECT OR INDIRECT CONDUCT INTENDED TO GATHER
6 INFORMATION, USING ANY MODE OF COMMUNICATION.

7 ~~(H) *INTERVIEW.*~~

8 ~~“INTERVIEW” MEANS ANY DIRECT CONTACT BY A COVERED EMPLOYER WITH AN
9 APPLICANT, WHETHER IN PERSON OR BY TELEPHONE, TO DISCUSS THE EMPLOYMENT BEING
10 SOUGHT OR THE APPLICANT’S QUALIFICATIONS.~~

11 ~~(H) (†) *PERSON.*~~

12 (1) *IN GENERAL.*

13 “PERSON” MEANS:

14 (I) AN INDIVIDUAL;

15 (II) A RECEIVER, TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, FIDUCIARY, OR
16 REPRESENTATIVE OF ANY KIND; OR

17 (III) A PARTNERSHIP, FIRM, ASSOCIATION, CORPORATION, OR OTHER ENTITY OF ANY
18 KIND.

19 (2) *EXCLUSIONS.*

20 “PERSON” DOES NOT INCLUDE A GOVERNMENTAL ENTITY OR AN INSTRUMENTALITY OR
21 UNIT OF A GOVERNMENTAL ENTITY.

22 **§ 14-2. FINDINGS; INTENT AND PURPOSE.**

23 (A) *FINDINGS.*

24 THE MAYOR AND CITY COUNCIL OF BALTIMORE FINDS THAT:

25 (1) INDIVIDUALS WITH CRIMINAL RECORDS SUFFER FROM PERVASIVE DISCRIMINATION
26 IN MANY FUNDAMENTAL AREAS OF LIFE, INCLUDING EMPLOYMENT, HOUSING,
27 EDUCATION, AND ELIGIBILITY FOR MANY FORMS OF SOCIAL BENEFITS;

28 (2) NATIONWIDE, THE PERCENTAGE OF PEOPLE OF COLOR WHO HAVE CRIMINAL
29 RECORDS EXCEEDS THE PERCENTAGE OF THEIR REPRESENTATION IN THE
30 POPULATION AS A WHOLE, WHICH DISPROPORTIONATELY IMPACTS THEIR LIVES,
31 FAMILIES, AND COMMUNITIES;

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- 1 (3) MANY INDIVIDUALS WITH CRIMINAL RECORDS ARE JOB SEEKERS WHO ARE READY
2 AND ABLE TO BECOME PART OF AND TO CONTRIBUTE TO THE WORK FORCE;
- 3 (4) LACK OF EMPLOYMENT IS A SIGNIFICANT CAUSE OF RECIDIVISM, WHILE
4 INDIVIDUALS WHO ARE EMPLOYED ARE SIGNIFICANTLY LESS LIKELY TO AGAIN
5 ENGAGE IN CRIMINAL ACTIVITIES;
- 6 (5) ARTIFICIAL BARRIERS TO EMPLOYMENT FOR PEOPLE WITH CRIMINAL RECORDS ARE
7 CREATING PERMANENT MEMBERS OF AN UNDERCLASS THAT THREATENS THE
8 HEALTH OF THE COMMUNITY AND UNDERMINES PUBLIC SAFETY;
- 9 (6) THE CITY OF BALTIMORE, IN ITS OWN EMPLOYMENT PRACTICES, HAS
10 IMPLEMENTED A SYSTEM OF SCREENING FOR INDIVIDUALS WITH CRIMINAL
11 RECORDS THAT IS FAIR TO ALL CONCERNED; AND
- 12 (7) THE CITY HAS A RESPONSIBILITY TO ENSURE THAT PRIVATE EMPLOYERS IN THE
13 CITY SIMILARLY MAINTAIN FAIR POLICIES FOR THE SCREENING AND
14 IDENTIFICATION OF INDIVIDUALS WITH CRIMINAL RECORDS.

15 (B) *INTENT AND PURPOSE.*

16 IT IS THE INTENT AND PURPOSE OF THIS SUBTITLE:

- 17 (1) TO ASSIST THE SUCCESSFUL REINTEGRATION BACK INTO THE COMMUNITY OF
18 INDIVIDUALS WITH CRIMINAL RECORDS, BY REMOVING ARTIFICIAL BARRIERS TO
19 GAINFUL EMPLOYMENT;
- 20 (2) TO ENHANCE THE HEALTH AND SECURITY OF THE COMMUNITY BY ASSISTING
21 INDIVIDUALS WITH CRIMINAL RECORDS TO LAWFULLY PROVIDE FOR THEIR
22 FAMILIES AND THEMSELVES; AND
- 23 (3) TO ENSURE THAT JUST AND FAIR MEASURES ARE IMPLEMENTED AND PRACTICED
24 WHEN PRE-SCREENING INDIVIDUALS TO IDENTIFY THOSE WHO MIGHT OR MIGHT
25 NOT HAVE CRIMINAL RECORDS.

26 **§ 14-3. CONSTRUCTION.**

27 (A) *IN GENERAL.*

- 28 (1) THIS SUBTITLE SHALL BE CONSTRUED TO PROMOTE A POLICY THAT GIVES AN
29 INDIVIDUAL WHO HAS A CRIMINAL RECORD, BUT OTHERWISE MEETS ALL CRITERIA FOR
30 CONSIDERATION FOR EMPLOYMENT, AN OPPORTUNITY TO BE JUDGED ON HIS OR HER
31 OWN MERIT WHEN INITIALLY APPLYING FOR EMPLOYMENT.
- 32 (2) THIS SUBTITLE, HOWEVER, MAY NOT BE CONSTRUED TO REQUIRE ANY EMPLOYER TO
33 HIRE SOMEONE WITH A CRIMINAL RECORD NOR TO LIMIT AN EMPLOYER’S ABILITY TO
34 CHOOSE THE MOST QUALIFIED AND APPROPRIATE APPLICANT FOR THE EMPLOYMENT
35 OPPORTUNITY AT HAND.

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1 (B) *FEDERAL, STATE LAW ON CRIMINAL RECORDS PREVAILS.*

2 NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO MODIFY OR WAIVE THE
3 REQUIREMENTS AND LIMITATIONS OF ANY FEDERAL OR STATE LAW ON ACCESS TO OR THE
4 USE OF CRIMINAL RECORDS.

5 (C) *SEVERABILITY.*

6 (1) ALL PROVISIONS OF THIS SUBTITLE ARE SEVERABLE.

7 (2) IF A COURT DETERMINES THAT A WORD, PHRASE, CLAUSE, SENTENCE, PARAGRAPH,
8 SUBSECTION, SECTION, OR OTHER PROVISION IS INVALID OR THAT THE APPLICATION OF
9 ANY PART OF THE PROVISION TO ANY PERSON OR CIRCUMSTANCES IS INVALID, THE
10 REMAINING PROVISIONS AND THE APPLICATION OF THOSE PROVISIONS TO OTHER
11 PERSONS OR CIRCUMSTANCES ARE NOT AFFECTED BY THAT DECISION.

12 **§§ 14-4 TO 14-5. {RESERVED}**

13 ***PART 2. PROHIBITED CONDUCT***

14 **~~§ 14-6. INQUIRIES INTO CERTAIN ARRESTS AND ACCUSATIONS.~~**

15 ~~IN CONNECTION WITH THE PROPOSED OR CONTINUED EMPLOYMENT OF ANY INDIVIDUAL, A~~
16 ~~COVERED EMPLOYER MAY NOT:~~

17 ~~(1) MAKE ANY INQUIRY ABOUT OR TO TAKE ANY ADVERSE ACTION AGAINST THE~~
18 ~~INDIVIDUAL ON THE BASIS OF ANY ARREST OF OR CRIMINAL ACCUSATION AGAINST~~
19 ~~THAT INDIVIDUAL, IF THE ARREST OR ACCUSATION IS NOT THEN PENDING AND DID NOT~~
20 ~~RESULT IN A CONVICTION; OR~~

21 ~~(2) REQUIRE THE INDIVIDUAL TO DISCLOSE OR REVEAL ANY ARREST OF OR CRIMINAL~~
22 ~~ACCUSATION AGAINST THAT INDIVIDUAL, IF THE ARREST OR CRIMINAL ACCUSATION IS~~
23 ~~NOT THEN PENDING AND DID NOT RESULT IN A CONVICTION.~~

24 **§ 14-6 §14-7. PRELIMINARY INQUIRIES INTO CRIMINAL RECORD.**

25 (A) “CONDITIONAL OFFER” DEFINED.

26 IN THIS SECTION, “CONDITIONAL OFFER” MEANS AN OFFER THAT IS CONDITIONED SOLELY
27 ON:

28 (1) THE RESULTS OF THE EMPLOYER’S SUBSEQUENT INQUIRING INTO OR GATHERING
29 INFORMATION ABOUT THE APPLICANT’S CRIMINAL RECORD; OR

30 (2) SOME OTHER CONTINGENCY EXPRESSLY COMMUNICATED TO THE APPLICANT AT
31 THE TIME OF THE OFFER.

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1 ~~(B) (A) BEFORE INQUIRIES PROHIBITED BEFORE CONDITIONAL OFFER.~~

2 IN CONNECTION WITH THE PROPOSED EMPLOYMENT OF ANY APPLICANT, A COVERED
3 EMPLOYER MAY NOT, AT ANY TIME BEFORE A CONDITIONAL OFFER OF EMPLOYMENT HAS
4 BEEN EXTENDED:

5 (1) REQUIRE THE APPLICANT TO DISCLOSE OR REVEAL WHETHER HE OR SHE HAS A
6 CRIMINAL RECORD OR OTHERWISE HAS HAD CRIMINAL ACCUSATIONS BROUGHT
7 AGAINST HER OR HIM;

8 (2) CONDUCT A CRIMINAL-RECORD CHECK ON THE APPLICANT; OR

9 (3) OTHERWISE MAKE ANY INQUIRY OF THE APPLICANT OR OTHERS ABOUT WHETHER
10 THE APPLICANT HAS A CRIMINAL RECORD OR OTHERWISE HAS HAD CRIMINAL
11 ACCUSATIONS BROUGHT AGAINST HER OR HIM.

12 ~~(B) IF NO INTERVIEW CONDUCTED.~~

13 ~~IF AN EMPLOYER DOES NOT CONDUCT AN INTERVIEW, THE EMPLOYER IS PROHIBITED FROM~~
14 ~~MAKING ANY INQUIRIES OR GATHERING ANY INFORMATION ABOUT THE APPLICANT'S~~
15 ~~CRIMINAL RECORD.~~

16 ~~§ 14-7 § 14-8. EXCEPTIONS EXCEPTION FOR ACTIONS EXPRESSLY AUTHORIZED BY OTHER~~
17 ~~LAW.~~

18 ~~(A) ACTIONS EXPRESSLY REQUIRED OR AUTHORIZED BY OTHER LAW.~~

19 THIS PART 2 DOES NOT APPLY TO ANY INQUIRY OR OTHER ACTION THAT IS REQUIRED OR
20 EXPRESSLY AUTHORIZED BY ~~SOME OTHER APPLICABLE LAW~~ AN APPLICABLE FEDERAL,
21 STATE, OR CITY LAW OR REGULATION.

22 ~~(B) FACILITIES SERVICING MINORS OR VULNERABLE ADULTS.~~

23 ~~(1) IN THIS SUBSECTION, "VULNERABLE ADULT" MEANS AN ADULT WHO LACKS THE~~
24 ~~PHYSICAL OR MENTAL CAPACITY TO PROVIDE FOR HIS OR HER OWN DAILY NEEDS.~~

25 ~~(2) THIS PART 2 DOES NOT APPLY TO ANY FACILITY OR EMPLOYER THAT PROVIDES~~
26 ~~PROGRAMS, SERVICES, OR DIRECT CARE TO MINORS OR TO VULNERABLE ADULTS.~~

27 ~~§§ 14-8 14-9 TO 14-10. {RESERVED}~~

28 ***PART 3. ADMINISTRATIVE ENFORCEMENT; PENALTIES***

29 **§ 14-11. COMPLAINT TO COMMUNITY RELATIONS COMMISSION.**

30 (A) *COMPLAINT AUTHORIZED.*

31 (1) ANY PERSON AGGRIEVED BY AN ALLEGED VIOLATION OF THIS SUBTITLE MAY FILE A
32 COMPLAINT WITH THE BALTIMORE COMMUNITY RELATIONS COMMISSION.

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1 (2) THE COMPLAINT SHALL BE FILED, INVESTIGATED, AND HEARD IN THE SAME MANNER
2 AS THAT PROVIDED IN CITY CODE ARTICLE 4 {"COMMUNITY RELATIONS"}, SUBTITLE
3 4 {"ENFORCEMENT"}, FOR ALLEGED VIOLATIONS OF THAT ARTICLE'S UNLAWFUL
4 DISCRIMINATORY EMPLOYMENT PRACTICES.

5 (B) *DECISION AND ORDER.*

6 IN ITS DECISION AND ORDER, THE COMMISSION MAY AWARD THE AGGRIEVED PERSON:

7 (1) BACK PAY FOR LOST WAGES CAUSED BY THE VIOLATION OF THIS SUBTITLE;

8 (2) REINSTATEMENT;

9 (3) COMPENSATORY DAMAGES, WHICH MAY INCLUDE:

10 (I) COMPENSATION FOR HUMILIATION, EMBARRASSMENT, AND EMOTIONAL
11 DISTRESS; AND

12 (II) EXPENSES INCURRED IN SEEKING OTHER EMPLOYMENT; AND

13 (4) REASONABLE ATTORNEY'S FEES.

14 **§ 14-12. JUDICIAL AND APPELLATE REVIEW.**

15 (A) *JUDICIAL REVIEW.*

16 A PARTY AGGRIEVED BY THE FINAL DECISION OF THE COMMUNITY RELATIONS
17 COMMISSION MAY SEEK JUDICIAL REVIEW OF THAT DECISION BY PETITION TO THE CIRCUIT
18 COURT FOR BALTIMORE CITY IN ACCORDANCE WITH THE MARYLAND RULES OF
19 PROCEDURE.

20 (B) *APPELLATE REVIEW.*

21 A PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT'S FINAL JUDGMENT TO THE
22 COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF
23 PROCEDURE.

24 **§ 14-13. RETALIATION OR DISCRIMINATION PROHIBITED.**

25 A COVERED EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE A PERSONNEL ACTION OR
26 OTHERWISE RETALIATE OR DISCRIMINATE AGAINST ANY PERSON AS A REPRISAL FOR THE
27 PERSON'S HAVING CLAIMED A VIOLATION OF THIS SUBTITLE.

28 **§§ 14-14 TO 14-15. {RESERVED}**

29 **§ 14-16. CRIMINAL PENALTIES.**

30 ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A MISDEMEANOR
31 AND, ON CONVICTION, IS SUBJECT TO A FINE OF NOT MORE THAN \$500 OR IMPRISONMENT FOR
32 NOT MORE THAN 90 DAYS OR BOTH FINE AND IMPRISONMENT FOR EACH OFFENSE.

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1 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
2 are not law and may not be considered to have been enacted as a part of this or any prior
3 Ordinance.

4 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 90th day
5 after the date it is enacted.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,
this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City