

**CITY OF BALTIMORE
COUNCIL BILL 07-0741
(First Reader)**

Introduced by: Councilmembers Middleton, Conaway, Welch, Young, Crider

Introduced and read first time: July 16, 2007

Assigned to: Labor Subcommittee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Labor Commissioner, Department of Human Resources, Office of Economic Development

A BILL ENTITLED

1 AN ORDINANCE concerning

2 style="text-align:center">**“Ban the Box” – Fair Criminal Record Screening Practices**

3 FOR the purpose of prohibiting City agencies from making certain inquiries about or taking
4 certain actions because of certain arrests or accusations; prohibiting City agencies in certain
5 circumstances from conducting criminal record checks of applicants for employment; setting
6 certain procedures for an agency’s proposed adverse action; setting standards and factors for
7 the disqualification of applicants based on a criminal conviction; prohibiting reprisals against
8 persons who allege a violation; providing for administrative and judicial review; providing
9 for a special effective date; and generally relating to fair criminal record screening practices.

10 BY renaming

11 Article 1 - Mayor, City Council, and Municipal Agencies

12 Subtitle 7. “City Officers and Employees”

13 to be

14 Subtitle 7. “Officers and Employees – General”

15 Baltimore City Code

16 (Edition 2000)

17 BY adding

18 Article 1 - Mayor, City Council, and Municipal Agencies

19 Section(s) 7A-1 to 7A-10, to be under the new subtitle,

20 “Subtitle 7A. Officers and Employees – Criminal Background Checks”

21 Baltimore City Code

22 (Edition 2000)

23 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That
24 City Code Article 1, Subtitle 7 is renamed to be “Officers and Employees – General”.

25 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the Laws of Baltimore City read as
26 follows:

27 style="text-align:center">**Baltimore City Code**

28 style="text-align:center">**Article 1. Mayor, City Council, and Municipal Agencies**

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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SUBTITLE 7A. OFFICERS AND EMPLOYEES – CRIMINAL BACKGROUND CHECKS

§ 7A-1. DEFINITIONS.

(A) *IN GENERAL.*

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

(B) *APPLICANT.*

“APPLICANT” MEANS ANY PERSON WHO IS BEING CONSIDERED OR WHO REQUESTS TO BE CONSIDERED FOR INITIAL EMPLOYMENT OR PROMOTION.

(C) *CITY AGENCY.*

“CITY AGENCY” MEANS THE CITY AND ANY OF ITS DEPARTMENTS, BUREAUS, AGENCIES, BOARDS, COMMISSIONS, OFFICES, OR OTHER UNITS.

(D) *CONVICTION.*

“CONVICTION” INCLUDES AN ACCEPTED PLEA OF NOLO CONTENDERE.

(E) *EMPLOYMENT.*

(1) “EMPLOYMENT” MEANS ANY WORK FOR PAY, INCLUDING CONTRACTUAL, TEMPORARY, OR SEASONAL WORK.

(2) “EMPLOYMENT” DOES NOT INCLUDE MEMBERSHIP IN ANY LAW ENFORCEMENT AGENCY.

§ 7A-2. PROHIBITED INQUIRY INTO CERTAIN ARRESTS AND ACCUSATIONS.

(A) *PROHIBITED PRACTICES ENUMERATED.*

IN CONNECTION WITH THE EMPLOYMENT OF ANY PERSON, A CITY AGENCY MAY NOT:

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

(2) REQUIRE ANY PERSON TO DISCLOSE OR REVEAL ANY ARREST OR CRIMINAL ACCUSATION MADE AGAINST THAT PERSON IF THE ARREST OR CRIMINAL ACCUSATION IS NOT THEN PENDING AGAINST THAT PERSON AND DID NOT RESULT IN A CONVICTION.

(B) *EXCEPTIONS.*

SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO ANY INQUIRY OR ADVERSE ACTION THAT IS REQUIRED OR EXPRESSLY PERMITTED BY SOME OTHER LAW.

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§ 7A-3. PROHIBITED INQUIRY INTO CRIMINAL RECORD.

(A) PREREQUISITE TO INQUIRY.

A CITY AGENCY MAY NOT CONDUCT A CRIMINAL RECORD CHECK ON AN APPLICANT UNLESS:

- (1) A CRIMINAL RECORD CHECK IS REQUIRED BY LAW; OR
- (2) THE EMPLOYER HAS MADE A GOOD FAITH DETERMINATION THAT THE RELEVANT POSITION IS SO SENSITIVE THAT A CRIMINAL RECORD CHECK IS WARRANTED.

(B) WHEN AUTHORIZED.

(1) BEFORE CONDUCTING ANY CRIMINAL RECORD CHECK ON AN APPLICANT, A CITY AGENCY MUST FIRST REVIEW THE QUALIFICATIONS OF THE PERSON AND DETERMINE THAT THE APPLICANT IS OTHERWISE QUALIFIED FOR THE RELEVANT POSITION.

(2) NO CITY AGENCY MAY CONDUCT A CRIMINAL RECORD CHECK FOR AN APPLICANT WHO IS NOT OTHERWISE QUALIFIED FOR THE RELEVANT POSITION.

§ 7A-4. PROCEDURE FOR PROPOSED ADVERSE ACTION.

(A) NOTICE TO APPLICANT.

IF, AS A RESULT OF A CRIMINAL RECORD CHECK, A CITY AGENCY IS INCLINED TO WITHHOLD, REFUSE, RESCIND, OR REVOKE THE OFFER OF A POSITION TO AN APPLICANT, THE CITY AGENCY MUST IMMEDIATELY:

- (1) NOTIFY THE APPLICANT OF THE POTENTIAL ADVERSE EMPLOYMENT ACTION;
- (2) PROVIDE THE APPLICANT WITH A PHOTOCOPY OF THE CRIMINAL RECORD REPORT RECEIVED BY THE AGENCY; AND
- (3) DETAIL THE SPECIFIC PARTS OF THE CRIMINAL RECORD REPORT THAT CONCERN THE AGENCY.

(B) RESPONSE BY APPLICANT.

(1) AFTER RECEIPT OF THE NOTICE AND PHOTOCOPY OF THE CRIMINAL RECORD, THE APPLICANT HAS 5 BUSINESS DAYS TO RESPOND TO THE CITY AGENCY ABOUT THE CRIMINAL RECORD REPORT.

(2) BEFORE TAKING ANY FINAL ACTION WITH REGARD TO THE APPLICANT, THE CITY AGENCY MUST:

- (i) PROVIDE THE APPLICANT WITH A REASONABLE OPPORTUNITY TO PRESENT DOCUMENTATION AND OTHER INFORMATION REBUTTING THE ACCURACY OR RELEVANCE OF THE CRIMINAL RECORD REPORT; AND

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1 (II) REVIEW ALL OF THE DOCUMENTATION AND OTHER INFORMATION RECEIVED
2 FROM THE APPLICANT.

3 (C) *AGENCY TO DOCUMENT STEPS TAKEN.*

4 THE CITY AGENCY MUST DOCUMENT ALL STEPS TAKEN TO COMPLY WITH THIS SECTION.

5 **§ 7A-5. DISQUALIFICATION BASED ON CRIMINAL CONVICTION – STANDARDS.**

6 (A) *“DIRECT RELATIONSHIP” DEFINED.*

7 IN THIS SECTION, “DIRECT RELATIONSHIP” MEANS THAT THE NATURE OF THE CRIMINAL
8 CONDUCT FOR WHICH THE PERSON WAS CONVICTED HAS A DIRECT OR SPECIFIC NEGATIVE
9 BEARING ON A PERSON’S FITNESS OR ABILITY TO PERFORM ONE OR MORE OF THE DUTIES
10 OR RESPONSIBILITIES NECESSARILY RELATED TO THE EMPLOYMENT SOUGHT.

11 (B) *STANDARDS.*

12 NO APPLICANT MAY BE DENIED EMPLOYMENT OR PROMOTION BY REASON OF THE
13 APPLICANT’S HAVING BEEN PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL
14 OFFENSES, OR BY REASON OF A FINDING OF LACK OF “GOOD MORAL CHARACTER” IF THAT
15 FINDING IS BASED ON THE APPLICANT’S HAVING BEEN PREVIOUSLY CONVICTED OF ONE OR
16 MORE CRIMINAL OFFENSES, UNLESS:

17 (1) THERE IS A DIRECT RELATIONSHIP BETWEEN ONE OR MORE OF THE CRIMINAL
18 OFFENSES AND THE SPECIFIC EMPLOYMENT SOUGHT; OR

19 (2) GRANTING THE EMPLOYMENT WOULD INVOLVE AN UNREASONABLE RISK TO
20 PROPERTY OR TO THE SAFETY OR WELFARE OF SPECIFIC INDIVIDUALS OR THE
21 GENERAL PUBLIC.

22 **§ 7A-6. DISQUALIFICATION BASED ON CRIMINAL CONVICTION – FACTORS.**

23 IN MAKING A DETERMINATION UNDER § 7A-5 {“DISQUALIFICATION BASED ON CRIMINAL
24 CONVICTION – STANDARDS”}, THE CITY AGENCY SHALL CONSIDER THE FOLLOWING FACTORS:

25 (1) THE PUBLIC POLICY OF THIS CITY TO ENCOURAGE THE EMPLOYMENT OF PERSONS
26 PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES.

27 (2) THE SPECIFIC DUTIES AND RESPONSIBILITIES NECESSARILY RELATED TO THE
28 EMPLOYMENT SOUGHT.

29 (3) THE BEARING, IF ANY, THAT THE CRIMINAL OFFENSE OR OFFENSES FOR WHICH THE
30 APPLICANT WAS PREVIOUSLY CONVICTED WILL HAVE ON HIS OR HER FITNESS OR
31 ABILITY TO PERFORM ONE OR MORE THE DUTIES OR RESPONSIBILITIES OF THE
32 EMPLOYMENT.

33 (4) THE TIME THAT HAS ELAPSED SINCE THE CRIMINAL OFFENSE OR OFFENSES.

34 (5) THE AGE OF THE APPLICANT WHEN THE CRIMINAL OFFENSE OR OFFENSES OCCURRED.

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1 (6) THE SERIOUSNESS OF THE CRIMINAL OFFENSE OR OFFENSES.

2 (7) ANY INFORMATION PRODUCED BY OR ON BEHALF OF THE APPLICANT IN REGARD TO
3 HER OR HIS REHABILITATION AND GOOD CONDUCT.

4 (8) THE LEGITIMATE INTEREST OF THE CITY IN PROTECTING PROPERTY AND THE SAFETY
5 AND WELFARE OF SPECIFIC INDIVIDUALS THE GENERAL PUBLIC.

6 **§ 7A-7. WRITTEN STATEMENT ON DENIAL OF EMPLOYMENT.**

7 WITHIN 30 DAYS OF THE REQUEST OF ANY PERSON WHO WAS PREVIOUSLY CONVICTED OF ONE
8 OR MORE CRIMINAL OFFENSES AND HAS BEEN DENIED EMPLOYMENT OR PROMOTION BY A CITY
9 AGENCY, THE AGENCY SHALL PROVIDE A WRITTEN STATEMENT SETTING FORTH THE REASONS
10 FOR THE DENIAL.

11 **§ 7A-8. COMPLAINT TO COMMUNITY RELATIONS COMMISSION.**

12 (A) *COMPLAINT AUTHORIZED.*

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

15 (2) THE COMPLAINT SHALL BE FILED, INVESTIGATED, AND HEARD IN THE SAME MANNER
16 AS IS PROVIDED IN CITY CODE ARTICLE 4, SUBTITLE 4, FOR ALLEGED VIOLATIONS OF
17 THAT ARTICLE.

18 (B) *DECISION AND ORDER.*

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

20 (1) BACK PAY FOR LOST WAGES CAUSED BY THE VIOLATION;

21 (2) REINSTATEMENT;

22 (3) COMPENSATORY DAMAGES; AND

23 (4) REASONABLE ATTORNEY'S FEES.

24 **§ 7A-9. JUDICIAL AND APPELLATE REVIEW.**

25 (A) *JUDICIAL REVIEW.*

26 A PARTY AGGRIEVED BY THE FINAL DECISION OF THE COMMUNITY RELATIONS
27 COMMISSION MAY SEEK JUDICIAL REVIEW OF THAT DECISION BY PETITION TO THE CIRCUIT
28 COURT FOR BALTIMORE CITY IN ACCORDANCE WITH THE MARYLAND RULES OF
29 PROCEDURE.

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1 (B) *APPELLATE REVIEW.*

2 A PARTY TO THE JUDICIAL REVIEW MAY APPEAL THE COURT’S FINAL JUDGMENT TO THE
3 COURT OF SPECIAL APPEALS IN ACCORDANCE WITH THE MARYLAND RULES OF
4 PROCEDURE.

5 **§ 7A-10. RETALIATION OR DISCRIMINATION PROHIBITED.**

6 A CITY AGENCY MAY NOT TAKE OR REFUSE TO TAKE A PERSONNEL ACTION OR OTHERWISE
7 RETALIATE OR DISCRIMINATE AGAINST ANY PERSON AS A REPRISAL FOR THE PERSON’S
8 HAVING CLAIMED A VIOLATION OF THIS SUBTITLE.

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

12 **SECTION 4. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 60th day
13 after the date it is enacted.