



Legislation Text

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

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL

Introduced by: Councilmember Mosby

A BILL ENTITLED

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; 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

§ 14-1. DEFINITIONS.

(A) IN GENERAL.

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

(B) APPLICANT.

"APPLICANT" MEANS ANY INDIVIDUAL WHO IS BEING CONSIDERED OR WHO REQUESTS TO BE CONSIDERED BY FOR EMPLOYMENT IN THE CITY OF BALTIMORE BY A COVERED EMPLOYER.

(C) CONVICTION.

(1) IN GENERAL.

"CONVICTION" MEANS ANY SENTENCE ARISING FROM A VERDICT OR PLEA OF GUILTY OR NOLO CONTENDERE.

(2) "CONVICTION" INCLUDES:

(I) A SENTENCE OF INCARCERATION OR FINE; AND

(II) A SUSPENDED SENTENCE.

(D) COVERED EMPLOYER; EMPLOYER.

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

(E) EMPLOYMENT.

(1) IN GENERAL.

"EMPLOYMENT" MEANS:

(I) ANY WORK FOR PAY; AND

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

(2) INCLUSIONS.

"EMPLOYMENT" INCLUDES:

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

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

(F) INCLUDES; INCLUDING.

"INCLUDES" OR "INCLUDING" MEANS BY WAY OF ILLUSTRATION AND NOT BY WAY OF LIMITATION.

(G) INQUIRY.

"INQUIRY" MEANS ANY DIRECT OR INDIRECT CONDUCT INTENDED TO GATHER INFORMATION, USING ANY MODE OF COMMUNICATION.

(H) INTERVIEW.

"INTERVIEW" MEANS ANY DIRECT CONTACT BY A COVERED EMPLOYER WITH AN APPLICANT, WHETHER IN PERSON OR BY TELEPHONE, TO DISCUSS THE EMPLOYMENT BEING SOUGHT OR THE APPLICANT'S QUALIFICATIONS.

(I) PERSON.

(1) IN GENERAL.

"PERSON" MEANS:

(I) AN INDIVIDUAL;

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

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

(2) EXCLUSIONS.

"PERSON" DOES NOT INCLUDE A GOVERNMENTAL ENTITY OR AN INSTRUMENTALITY OR UNIT OF A GOVERNMENTAL ENTITY.

§ 14-2. FINDINGS; INTENT AND PURPOSE.

(A) FINDINGS.

THE MAYOR AND CITY COUNCIL OF BALTIMORE FINDS THAT:

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

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

(3) MANY INDIVIDUALS WITH CRIMINAL RECORDS ARE JOB SEEKERS WHO ARE READY AND

ABLE TO BECOME PART OF AND TO CONTRIBUTE TO THE WORK FORCE;

(4) LACK OF EMPLOYMENT IS A SIGNIFICANT CAUSE OF RECIDIVISM, WHILE INDIVIDUALS WHO ARE EMPLOYED ARE SIGNIFICANTLY LESS LIKELY TO AGAIN ENGAGE IN CRIMINAL ACTIVITIES;

(5) ARTIFICIAL BARRIERS TO EMPLOYMENT FOR PEOPLE WITH CRIMINAL RECORDS ARE CREATING PERMANENT MEMBERS OF AN UNDERCLASS THAT THREATENS THE HEALTH OF THE COMMUNITY AND UNDERMINES PUBLIC SAFETY;

(6) THE CITY OF BALTIMORE, IN ITS OWN EMPLOYMENT PRACTICES, HAS IMPLEMENTED A SYSTEM OF SCREENING FOR INDIVIDUALS WITH CRIMINAL RECORDS THAT IS FAIR TO ALL CONCERNED; AND

(7) THE CITY HAS A RESPONSIBILITY TO ENSURE THAT PRIVATE EMPLOYERS IN THE CITY SIMILARLY MAINTAIN FAIR POLICIES FOR THE SCREENING AND IDENTIFICATION OF INDIVIDUALS WITH CRIMINAL RECORDS.

(B) INTENT AND PURPOSE.

IT IS THE INTENT AND PURPOSE OF THIS SUBTITLE:

(1) TO ASSIST THE SUCCESSFUL REINTEGRATION BACK INTO THE COMMUNITY OF INDIVIDUALS WITH CRIMINAL RECORDS, BY REMOVING ARTIFICIAL BARRIERS TO GAINFUL EMPLOYMENT;

(2) TO ENHANCE THE HEALTH AND SECURITY OF THE COMMUNITY BY ASSISTING INDIVIDUALS WITH CRIMINAL RECORDS TO LAWFULLY PROVIDE FOR THEIR FAMILIES AND THEMSELVES; AND

(3) TO ENSURE THAT JUST AND FAIR MEASURES ARE IMPLEMENTED AND PRACTICED WHEN PRE-SCREENING INDIVIDUALS TO IDENTIFY THOSE WHO MIGHT OR MIGHT NOT HAVE CRIMINAL RECORDS.

§ 14-3. CONSTRUCTION.

(A) IN GENERAL.

(1) THIS SUBTITLE SHALL BE CONSTRUED TO PROMOTE A POLICY THAT GIVES AN INDIVIDUAL WHO HAS A CRIMINAL RECORD, BUT OTHERWISE MEETS ALL CRITERIA FOR CONSIDERATION FOR EMPLOYMENT, AN OPPORTUNITY TO BE JUDGED ON HIS OR HER OWN MERIT WHEN INITIALLY APPLYING FOR EMPLOYMENT.

(2) THIS SUBTITLE, HOWEVER, MAY NOT BE CONSTRUED TO REQUIRE ANY EMPLOYER TO HIRE SOMEONE WITH A CRIMINAL RECORD NOR TO LIMIT AN EMPLOYER'S ABILITY TO CHOOSE THE MOST QUALIFIED AND APPROPRIATE APPLICANT FOR THE EMPLOYMENT OPPORTUNITY AT HAND.

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

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

(C) SEVERABILITY.

(1) ALL PROVISIONS OF THIS SUBTITLE ARE SEVERABLE.

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

§§ 14-4 TO 14-5. {RESERVED}

PART 2. PROHIBITED CONDUCT

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

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

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

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

§ 14-7. PRELIMINARY INQUIRIES INTO CRIMINAL RECORD.

(A) BEFORE CONDITIONAL OFFER.

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

(1) REQUIRE THE APPLICANT TO DISCLOSE OR REVEAL WHETHER HE OR SHE HAS A CRIMINAL RECORD;

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

(3) OTHERWISE MAKE ANY INQUIRY OF THE APPLICANT OR OTHERS ABOUT WHETHER THE APPLICANT HAS A CRIMINAL RECORD.

(B) IF NO INTERVIEW CONDUCTED.

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

§ 14-8. EXCEPTION FOR ACTIONS EXPRESSLY AUTHORIZED BY OTHER LAW.

THIS PART 2 DOES NOT APPLY TO ANY INQUIRY OR OTHER ACTION THAT IS REQUIRED OR EXPRESSLY AUTHORIZED BY SOME OTHER APPLICABLE LAW.

§§ 14-9 TO 14-10. {RESERVED}

PART 3. ADMINISTRATIVE ENFORCEMENT; PENALTIES

§ 14-11. COMPLAINT TO COMMUNITY RELATIONS COMMISSION.

(A) COMPLAINT AUTHORIZED.

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

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

(B) DECISION AND ORDER.

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

- (1) BACK PAY FOR LOST WAGES CAUSED BY THE VIOLATION OF THIS SUBTITLE;
- (2) REINSTATEMENT;
- (3) COMPENSATORY DAMAGES; AND
- (4) REASONABLE ATTORNEY'S FEES.

§ 14-12. JUDICIAL AND APPELLATE REVIEW.

(A) JUDICIAL REVIEW.

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

(B) APPELLATE REVIEW.

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

§ 14-13. RETALIATION OR DISCRIMINATION PROHIBITED.

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

§§ 14-14 TO 14-15. {RESERVED}

§ 14-16. CRIMINAL PENALTIES.

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

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

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

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