

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 839
Finance

(Senator Carter)

Labor and Employment - Criminal Record Screening Practices (Ban the Box)

This bill prohibits an employer with 15 or more full-time employees from, before a conditional offer of employment has been extended to an applicant, (1) conducting a criminal history records check on the applicant or (2) requiring the applicant to disclose, or otherwise inquiring from the applicant or others about, whether the applicant has a criminal record or has had criminal accusations brought against the applicant. The bill does not apply to an employer that is expressly authorized to do so by another applicable federal, State, or local law or if the employer provides programs, services, or direct care to minors or to vulnerable adults. **The bill takes effect January 1, 2020.**

Fiscal Summary

State Effect: The bill does not apply to the State as an employer. Any change in State activities does not materially affect State finances, as discussed below.

Local Effect: The bill does not apply to local governments as employers. The bill's penalty provision is not anticipated to materially affect local incarceration costs. Local revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill defines "criminal record" and "employment," which includes work through an employment agency, any form of vocational or educational training, regardless of pay, and contractual, temporary, seasonal, or contingent work.

The Commissioner of Labor and Industry within the Department of Labor, Licensing, and Regulation may, on receipt of a written complaint from an applicant or employee, investigate the complaint. Whenever the commissioner determines that the bill has been violated, the commissioner may try to resolve the issue informally by mediation or ask the Attorney General to bring an action on behalf of the applicant or employee in the county where the violation allegedly occurred, for injunctive relief, damages, or other relief. An employer may not retaliate against an applicant or employee who claims a violation under the bill. An employer who violates the bill is guilty of a misdemeanor and on conviction is subject to a maximum \$500 fine and/or imprisonment for up to 90 days for each violation.

Current Law: Maryland law does not prohibit private-sector employers from inquiring into the criminal record or history of an applicant.

State appointing authorities in the Executive, Legislative, or Judicial branches are generally prohibited from inquiring into the criminal record or history of an applicant for employment until the applicant has been given an opportunity for an interview. However, exemptions exist for the Department of Public Safety and Correctional Services (DPSCS), any position for which an appointing authority is required by law to conduct a criminal history records check, any position in the sheriff's office of any county (with respect to constitutional obligations), or any position within the State Personnel Management System exempted by the Secretary of Budget and Management. An appointing authority may still notify an applicant that prior criminal convictions may prohibit employment for some positions.

DPSCS's Criminal Justice Information System (CJIS) Central Repository collects, manages, and disseminates Maryland's criminal history record information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. CJIS is a fingerprint-supported system for positive identification. When a state mandates a national check, the Federal Bureau of Investigation (FBI) requires that the national check be set in statute. The CJIS Central Repository is authorized by law to collect a fee for providing criminal history record information for purposes other than criminal justice. Each individual subject to a criminal history records check is required to pay \$51.25 for a State and national criminal history records check, which includes a \$20 fingerprinting fee, a \$13.25 FBI fee, and an \$18 fee to the CJIS Central Repository.

Background: Maryland is one of 33 states with "ban-the-box" statutes affecting state hiring; 11 states extend the prohibition to private-sector employers. Baltimore City and Montgomery and Prince George's counties have "ban-the-box" laws. [Montgomery County](#) generally prohibits employers with at least 15 employees from conducting a criminal background check or otherwise inquiring into an applicant's criminal record before the conclusion of a first interview. [Baltimore City](#) generally prohibits employers with at least 10 employees from conducting a criminal background check or otherwise inquiring into an

applicant's criminal record until a conditional offer of employment has been extended. [Prince George's County](#) generally prohibits employers with at least 25 employees from conducting a criminal background check or otherwise inquiring into an applicant's criminal record before the conclusion of a first interview. In fiscal 2018, Prince George's County successfully pursued two cases against employers who demonstrated some discriminatory activity against individuals with a criminal history.

U.S. Equal Employment Opportunity Commission

The federal Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate the prohibition against employment discrimination under Title 7 of the Civil Rights Act of 1964, as amended. A violation may occur when an employer treats criminal history information differently for different applicants or employees, based on their race or national origin. An employer's neutral policy (*e.g.*, excluding applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected under Title 7 and may violate the law if not job related and consistent with business necessity. EEOC issued [best practices](#) for employers who are considering criminal record information when making employment decisions, which included eliminating policies or practices that exclude people from employment based on any criminal record.

State Fiscal Effect: The current cost of a full State and national criminal history records check is \$51.25 (including a \$13.25 FBI fee, an \$18 CJIS fee, and a \$20 fingerprinting fee). To the extent that fewer criminal history records checks are performed for employers, special fund revenues and expenditures to CJIS decrease. However, since employers may still conduct a criminal history records check after making a conditional offer of employment and since there are exemptions to the bill, it is unlikely that there will be a significant change in the number of criminal history records checks performed.

The Department of Labor, Licensing, and Regulation can enforce the bill with existing resources, and the Judiciary and the Office of the Attorney General can likely handle any increase in cases with existing resources.

General fund revenues may increase minimally as a result of the bill's penalty provision from cases heard in the District Court. The bill's penalty provision is not anticipated to materially affect State incarceration costs.

Additional Information

Prior Introductions: A similar bill, HB 541 of 2018, received an unfavorable report by the House Economic Matters Committee.

Cross File: HB 994 (Delegate Mosby, *et al.*) - Economic Matters.

Information Source(s): Baltimore City; Montgomery and Prince George's counties; Maryland Commission on Civil Rights; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; U.S. Equal Employment Opportunity Commission; Department of Legislative Services

Fiscal Note History: First Reader - March 13, 2019
mag/mcr

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