

Maryland Is Latest State to “Ban the Box”

February 5, 2020

By [Brian W. Steinbach](#)

Effective February 29, 2020, Maryland will become the 14th state to “ban the box”—i.e., prohibit private employers from asking job applicants to disclose any criminal records or criminal accusations, in this case, prior to the first in-person interview. Although the Maryland General Assembly originally passed the [ban-the-box law](#) (“Law”) in April 2019, Governor Larry Hogan subsequently [vetoed](#) it. However, the General Assembly [overrode the veto on January 30, 2020](#).

Prohibited Inquiries and Actions

The Law bars all Maryland employers of 15 or more full-time employees (presumably in the state), at any time before a first in-person interview, from requiring an applicant for employment to disclose whether the applicant has a criminal record or has had criminal accusations brought against the applicant. The Law applies to applicants for contractual, temporary, seasonal, or contingent work and for work through a temporary or other employment agency. However, during or after the first in-person interview, an employer may require disclosure of a criminal record or criminal accusations. The Law is similar to existing laws in [Montgomery County](#) and [Prince George’s County](#), but it is narrower than the law in [Baltimore City](#), which bars inquiries until *after* a conditional offer of employment. Notable, the Law expressly does not preempt a local jurisdiction from enacting or enforcing a more restrictive law applicable to that jurisdiction.

A “criminal record” includes arrests, pleas, or verdicts of guilty; a plea of nolo contendere; the marking of a charge “stet” on the docket; a disposition of probation before judgment; or a disposition of not criminally responsible.

A covered employer also may not take or refuse to take personnel action or otherwise retaliate or discriminate against an applicant or employees as a reprisal for having claimed a violation of this section.

Enforcement

The Law is enforced by the Maryland Commissioner of Labor and Industry. Violators are subject to an order compelling compliance and, for subsequent violations, a civil penalty

of up to \$300 for each applicant with respect to whom the employer violated any provision of the Law. The Law does not include any posting or notification requirements.

Exemptions

The Law, like the local Maryland laws, exempts inquiries or other actions required or expressly authorized by another applicable federal or state law, and does not apply to an employer that provides programs, services, or direct care to minors or to vulnerable adults. The Law also does not appear to bar an independent criminal history check or inquiries to others, as language that would have done this was deleted in the legislative process. However, such a pre-interview inquiry of third parties remains unlawful in Montgomery and Prince George's Counties and Baltimore City.

What Maryland Employers Should Do Now

- Revise job applications to remove any questions seeking criminal record history.
- On the other hand, if using a multistate application, either:
 - consider removing all questions about criminal history, regardless of whether all jurisdictions where the company has offices have enacted a ban-the-box law, or
 - clarify that applicants for positions in Maryland should not respond to questions seeking criminal history information.
- Consider preparing a criminal history questionnaire seeking the criminal history information typically sought on an employment application, which can be provided *after* the application process (except in Baltimore City), if such an inquiry will be made.
- If criminal history inquiries will be made subsequent to a contingent offer, indicate in the offer letter that the offer is contingent on the successful completion of a criminal background check.
- Train managers, recruiters, and other human resources personnel not to inquire about an applicant's criminal history until after the initial interview.
- Review job postings and advertisements to ensure that they do not include any information that limits or otherwise specifies that employment will depend on an applicant's criminal history (except where that is required by law).
- Make sure that any vendors acting on your behalf, such as employment and temporary agencies and background check providers, obey the Law.
- Be sure to comply with stricter local ban-the-box laws, and consider complying with such laws in neighboring jurisdictions, such as the [District of Columbia](#).

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