

HOUSE BILL 541

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By: **Delegates Mosby, Ali, Angel, Conaway, Glenn, Gutierrez, Hayes, J. Lewis, R. Lewis, Morales, Patterson, Proctor, Sanchez, Sydnor, Tarlau, and P. Young**

Introduced and read first time: January 26, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Criminal Record Screening Practices**
3 **(Ban the Box)**

4 FOR the purpose of authorizing the Commissioner of Labor and Industry to conduct an
5 investigation to determine whether certain provisions of this Act have been violated
6 on receipt of a certain written complaint; prohibiting certain employers from
7 requiring an applicant for employment to disclose certain information regarding the
8 criminal record of the applicant, conducting a certain criminal history records check,
9 or taking other certain action before a conditional offer for employment has been
10 extended; providing that certain provisions of this Act do not prohibit an employer
11 from making a certain inquiry or taking certain other action; providing that certain
12 provisions of this Act do not apply to certain employers; authorizing the
13 Commissioner on a certain determination to resolve certain issues informally or by
14 mediation; authorizing the Commissioner to ask the Attorney General to bring a
15 certain action on behalf of certain applicants under certain circumstances;
16 authorizing the Attorney General to bring a certain action in a certain county under
17 certain circumstances for injunctive relief, damages, or other relief; prohibiting
18 employers from taking or refusing to take certain actions against certain applicants
19 and employees under certain circumstances; establishing a certain penalty; defining
20 certain terms; providing for a delayed effective date; and generally relating to
21 criminal record screening practices of employers.

22 BY repealing and reenacting, with amendments,
23 Article – Labor and Employment
24 Section 3–103
25 Annotated Code of Maryland
26 (2016 Replacement Volume and 2017 Supplement)

27 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Labor and Employment

2 Section 3–1301 through 3–1306 to be under the new subtitle “Subtitle 13. Criminal
3 History Screening”

4 Annotated Code of Maryland

5 (2016 Replacement Volume and 2017 Supplement)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

7 That the Laws of Maryland read as follows:

8 **Article – Labor and Employment**

9 3–103.

10 (a) Except as otherwise provided in this section, the Commissioner may conduct
11 an investigation to determine whether a provision of this title has been violated on the
12 Commissioner’s own initiative or may require a written complaint.

13 (b) The Commissioner may conduct an investigation under Subtitle 3 of this title,
14 on the Commissioner’s own initiative or on receipt of a written complaint of an employee.

15 (c) The Commissioner may conduct an investigation to determine whether
16 Subtitle 5 of this title has been violated on receipt of a written complaint of an employee.

17 (d) The Commissioner may conduct an investigation to determine whether
18 Subtitle 6 of this title has been violated on receipt of a written complaint of a sales
19 representative.

20 (e) (1) The Commissioner may investigate whether § 3–701 of this title has
21 been violated on receipt of a written complaint of an applicant for employment.

22 (2) The Commissioner may investigate whether § 3–702 of this title has
23 been violated on receipt of a written complaint of an applicant for employment or an
24 employee.

25 (3) The Commissioner may investigate whether § 3–704 of this title has
26 been violated on receipt of a written complaint of an employee.

27 (4) The Commissioner may investigate whether § 3–710 of this title has
28 been violated on receipt of a written complaint of an employee as provided in § 3–710(d)(1)
29 of this title.

30 (5) The Commissioner may investigate whether § 3–711 of this title has
31 been violated on receipt of a written complaint of an employee as provided in § 3–711(d)(1)
32 of this title.

33 (6) The Commissioner may investigate whether § 3–712 of this title has
34 been violated on receipt of a written complaint of an employee or applicant.

1 (f) (1) The Commissioner may investigate whether § 3–801 of this title has
2 been violated on receipt of a written complaint of an employee.

3 (2) The Commissioner may investigate whether § 3–802 of this title has
4 been violated on receipt of a written complaint of an employee.

5 (g) The Commissioner may investigate whether Subtitle 9 of this title has been
6 violated:

7 (1) on the Commissioner’s own initiative;

8 (2) on receipt of a written complaint signed by the person submitting the
9 complaint; or

10 (3) on referral from another unit of State government.

11 (h) The Commissioner may conduct an investigation to determine whether
12 Subtitle 10 of this title has been violated on receipt of a written complaint of an employee.

13 (i) The Commissioner may conduct an investigation to determine whether
14 Subtitle 12 of this title has been violated on receipt of a written complaint of an employee.

15 (j) **THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE**
16 **WHETHER SUBTITLE 13 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A**
17 **WRITTEN COMPLAINT OF AN APPLICANT OR EMPLOYEE.**

18 (K) The Commissioner, on the Commissioner’s own initiative or on receipt of a
19 written complaint, may conduct an investigation of whether a local minimum wage law has
20 been violated.

21 **SUBTITLE 13. CRIMINAL HISTORY SCREENING.**

22 **3–1301.**

23 (A) **IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
24 **INDICATED.**

25 (B) **“CRIMINAL RECORD” MEANS:**

26 (1) **AN ARREST;**

27 (2) **A PLEA OR VERDICT OF GUILTY;**

28 (3) **A PLEA OF NOLO CONTENDERE;**

1 (4) A DISPOSITION OF PROBATION BEFORE JUDGMENT; OR

2 (5) A DISPOSITION OF NOT CRIMINALLY RESPONSIBLE.

3 (C) (1) "EMPLOYER" MEANS A PERSON WHO EMPLOYS 15 OR MORE
4 FULL-TIME EMPLOYEES.

5 (2) "EMPLOYER" INCLUDES A PERSON WHO ACTS, DIRECTLY OR
6 INDIRECTLY, IN THE INTEREST OF AN EMPLOYER WITH RESPECT TO AN EMPLOYEE
7 OF THE EMPLOYER.

8 (D) (1) "EMPLOYMENT" MEANS ANY WORK FOR PAY AND ANY FORM OF
9 VOCATIONAL OR EDUCATIONAL TRAINING, WITH OR WITHOUT PAY.

10 (2) "EMPLOYMENT" INCLUDES:

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

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

15 3-1302.

16 THIS SUBTITLE DOES NOT:

17 (1) PROHIBIT AN EMPLOYER FROM MAKING AN INQUIRY OR TAKING
18 OTHER ACTION THAT THE EMPLOYER IS REQUIRED TO TAKE OR IS EXPRESSLY
19 AUTHORIZED TO TAKE BY ANOTHER APPLICABLE FEDERAL, STATE, OR LOCAL LAW;
20 OR

21 (2) APPLY TO AN EMPLOYER THAT PROVIDES PROGRAMS, SERVICES,
22 OR DIRECT CARE TO MINORS OR TO VULNERABLE ADULTS.

23 3-1303.

24 AN EMPLOYER MAY NOT, AT ANY TIME BEFORE A CONDITIONAL OFFER OF
25 EMPLOYMENT HAS BEEN EXTENDED:

26 (1) REQUIRE AN APPLICANT TO DISCLOSE WHETHER THE APPLICANT
27 HAS A CRIMINAL RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST
28 THE APPLICANT;

1 **(2) CONDUCT A CRIMINAL HISTORY RECORDS CHECK ON THE**
2 **APPLICANT; OR**

3 **(3) OTHERWISE INQUIRE OF THE APPLICANT OR OTHERS ABOUT**
4 **WHETHER THE APPLICANT HAS A CRIMINAL RECORD OR HAS HAD CRIMINAL**
5 **ACCUSATIONS BROUGHT AGAINST THE APPLICANT.**

6 **3-1304.**

7 **(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE**
8 **HAS BEEN VIOLATED, THE COMMISSIONER MAY:**

9 **(1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION**
10 **INFORMALLY BY MEDIATION; OR**

11 **(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF**
12 **OF THE APPLICANT OR EMPLOYEE.**

13 **(B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS SECTION**
14 **IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED, FOR INJUNCTIVE**
15 **RELIEF, DAMAGES, OR OTHER RELIEF.**

16 **3-1305.**

17 **AN EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE A PERSONNEL ACTION OR**
18 **OTHERWISE RETALIATE OR DISCRIMINATE AGAINST AN APPLICANT OR EMPLOYEE**
19 **AS A REPRISAL FOR THE APPLICANT OR EMPLOYEE HAVING CLAIMED A VIOLATION**
20 **OF THIS SUBTITLE.**

21 **3-1306.**

22 **AN EMPLOYER WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY**
23 **OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING**
24 **\$500 OR IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR BOTH FOR EACH**
25 **VIOLATION.**

26 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
27 **January 1, 2019.**