

Chapter 3

(Senate Bill 839 of the 2019 Regular Session)

AN ACT concerning

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

FOR the purpose of authorizing the Commissioner of Labor and Industry to conduct an investigation to determine whether certain provisions of this Act have been violated on receipt of a certain written complaint; prohibiting certain employers from requiring an applicant for employment to disclose certain information regarding the criminal record of the applicant except under certain circumstances, ~~conducting a certain criminal history records check, or taking certain other action before a conditional offer for employment has been extended~~ the conclusion of a first in-person interview; providing that certain provisions of this Act do not prohibit an employer from making a certain inquiry or taking certain other action; providing that certain provisions of this Act do not apply to certain employers; ~~authorizing requiring the Commissioner on a certain determination to resolve certain issues informally by mediation; authorizing the Commissioner to ask the Attorney General to bring a certain action on behalf of certain applicants under certain circumstances; authorizing the Attorney General to bring a certain action in a certain county under certain circumstances for injunctive relief, damages, or other relief;~~ prohibiting employers from taking or refusing to take certain actions against certain applicants and employees under certain circumstances; ~~establishing a certain civil penalty; requiring the Commissioner to issue a certain order under certain circumstances; authorizing the Commissioner to assess a certain civil penalty for certain violations of this Act under certain circumstances; requiring the Commissioner to consider certain factors in determining the amount of a certain penalty; subjecting the assessment of a certain penalty to certain requirements; providing for the construction of this Act;~~ defining certain terms; providing for a delayed effective date; and generally relating to criminal record screening practices of employers.

BY repealing and reenacting, with amendments,
 Article – Labor and Employment
 Section 3-103
 Annotated Code of Maryland
 (2016 Replacement Volume and 2018 Supplement)

BY adding to
 Article – Labor and Employment
 Section 3-1401 through ~~3-1406~~ 3-1405 to be under the new subtitle “Subtitle 14.
 Criminal History Screening”
 Annotated Code of Maryland
 (2016 Replacement Volume and 2018 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Labor and Employment

3–103.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) on the Commissioner's own initiative;

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

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

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

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

(J) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER SUBTITLE 14 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN APPLICANT OR EMPLOYEE.

[(j)] (K) The Commissioner, on the Commissioner's own initiative or on receipt of a written complaint, may conduct an investigation of whether a local minimum wage law has been violated.

[(k)] (L) (1) The Commissioner may conduct an investigation to determine whether Subtitle 13 of this title has been violated on receipt of a written complaint by an employee.

(2) To the extent practicable, the Commissioner shall keep confidential the identity of an employee who has filed a written complaint alleging a violation of Subtitle 13 of this title unless the employee waives confidentiality.

SUBTITLE 14. CRIMINAL HISTORY SCREENING.

3-1401.

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

(B) "CRIMINAL RECORD" MEANS:

(1) AN ARREST;

- (2) A PLEA OR VERDICT OF GUILTY;
- (3) A PLEA OF NOLO CONTENDERE;
- (4) THE MARKING OF A CHARGE “STET” ON THE DOCKET;
- (5) A DISPOSITION OF PROBATION BEFORE JUDGMENT; OR
- ~~(5)~~ (6) A DISPOSITION OF NOT CRIMINALLY RESPONSIBLE.

(C) (1) “EMPLOYER” MEANS A PERSON WHO EMPLOYS 15 OR MORE FULL-TIME EMPLOYEES.

(2) “EMPLOYER” INCLUDES A PERSON WHO ACTS, DIRECTLY OR INDIRECTLY, IN THE INTEREST OF AN EMPLOYER WITH RESPECT TO AN EMPLOYEE OF THE EMPLOYER.

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

(2) “EMPLOYMENT” INCLUDES:

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

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

3-1402.

(A) THIS SUBTITLE DOES NOT:

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

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

(B) THIS SUBTITLE MAY NOT BE CONSTRUED TO PREEMPT A LOCAL JURISDICTION FROM ENACTING OR ENFORCING A LAW THAT IS MORE RESTRICTIVE WITH RESPECT TO CRIMINAL RECORD SCREENING PRACTICES OF EMPLOYERS IN THE LOCAL JURISDICTION.

3-1403.

~~(A) AN EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN EMPLOYER MAY NOT, AT ANY TIME BEFORE A CONDITIONAL OFFER OF EMPLOYMENT HAS BEEN EXTENDED THE CONCLUSION OF A FIRST FIRST IN-PERSON INTERVIEW,;~~

~~(1) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, REQUIRE AN APPLICANT TO DISCLOSE WHETHER THE APPLICANT HAS A CRIMINAL RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST THE APPLICANT;~~

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

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

(B) AN EMPLOYER MAY REQUIRE AN APPLICANT TO DISCLOSE DURING THE FIRST IN-PERSON ~~IN PERSON~~ INTERVIEW WITH THE APPLICANT WHETHER THE APPLICANT HAS A CRIMINAL RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST THE APPLICANT.

3-1404.

~~(A) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER MAY:~~

~~(1) SHALL TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION INFORMALLY BY MEDIATION; OR;~~

~~(2) IF MEDIATION UNDER PARAGRAPH (1) OF THIS SUBSECTION IS UNSUCCESSFUL, THE COMMISSIONER MAY ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF OF THE APPLICANT OR EMPLOYEE.~~

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

~~3-1405.~~

AN EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE A PERSONNEL ACTION OR OTHERWISE RETALIATE OR DISCRIMINATE AGAINST AN APPLICANT OR EMPLOYEE

AS A REPRISAL FOR THE APPLICANT OR EMPLOYEE HAVING CLAIMED A VIOLATION OF THIS SUBTITLE.

~~3-1406.~~ 3-1405.

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

(A) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS VIOLATED ANY PROVISION OF THIS SUBTITLE, THE COMMISSIONER:

(1) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND

(2) FOR A SUBSEQUENT VIOLATION, MAY, IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL PENALTY OF UP TO \$300 FOR EACH APPLICANT FOR EMPLOYMENT OR EMPLOYEE WITH RESPECT TO WHOM THE EMPLOYER VIOLATED ANY PROVISION OF THIS SUBTITLE.

(B) IN DETERMINING THE AMOUNT OF THE PENALTY, IF ASSESSED, THE COMMISSIONER SHALL CONSIDER:

(1) THE GRAVITY OF THE VIOLATION;

(2) THE SIZE OF THE EMPLOYER'S BUSINESS;

(3) THE EMPLOYER'S GOOD FAITH; AND

(4) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS SUBTITLE.

(C) THE ASSESSMENT OF A PENALTY UNDER SUBSECTION (A)(2) OF THIS SECTION SHALL BE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2020.

Gubernatorial Veto Override, January 30, 2020.