

SENATE BILL 839

K3

(9lr2220)

ENROLLED BILL

— Finance/Economic Matters —

Introduced by ~~Senator Carter~~ Senators Carter and Smith

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

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 except under certain circumstances, ~~conducting a~~
9 ~~certain criminal history records check, or taking certain other action before a~~
10 ~~conditional offer for employment has been extended~~ the conclusion of a first first
11 in-person interview; providing that certain provisions of this Act do not prohibit an
12 employer from making a certain inquiry or taking certain other action; providing
13 that certain provisions of this Act do not apply to certain employers; ~~authorizing~~
14 ~~requiring the Commissioner on a certain determination to resolve certain issues~~
15 ~~informally by mediation; authorizing the Commissioner to ask the Attorney General~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 ~~to bring a certain action on behalf of certain applicants under certain circumstances;~~
 2 ~~authorizing the Attorney General to bring a certain action in a certain county under~~
 3 ~~certain circumstances for injunctive relief, damages, or other relief;~~ prohibiting
 4 employers from taking or refusing to take certain actions against certain applicants
 5 and employees under certain circumstances; ~~establishing a certain civil penalty;~~
 6 requiring the Commissioner to issue a certain order under certain circumstances;
 7 authorizing the Commissioner to assess a certain civil penalty for certain violations
 8 of this Act under certain circumstances; requiring the Commissioner to consider
 9 certain factors in determining the amount of a certain penalty; subjecting the
 10 assessment of a certain penalty to certain requirements; providing for the construction
 11 of this Act; defining certain terms; providing for a delayed effective date; and
 12 generally relating to criminal record screening practices of employers.

13 BY repealing and reenacting, with amendments,

14 Article – Labor and Employment

15 Section 3–103

16 Annotated Code of Maryland

17 (2016 Replacement Volume and 2018 Supplement)

18 BY adding to

19 Article – Labor and Employment

20 Section 3–1401 through ~~3–1406~~ 3–1405 to be under the new subtitle “Subtitle 14.
 21 Criminal History Screening”

22 Annotated Code of Maryland

23 (2016 Replacement Volume and 2018 Supplement)

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

25 That the Laws of Maryland read as follows:

26 **Article – Labor and Employment**

27 3–103.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) on the Commissioner's own initiative;

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

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

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

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

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

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

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

5 3-1402.

6 (A) THIS SUBTITLE DOES NOT:

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

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

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

17 3-1403.

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

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

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

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

30 (B) AN EMPLOYER MAY REQUIRE AN APPLICANT TO DISCLOSE DURING THE
31 FIRST IN-PERSON ~~IN-PERSON~~ INTERVIEW WITH THE APPLICANT WHETHER THE

1 APPLICANT HAS A CRIMINAL RECORD OR HAS HAD CRIMINAL ACCUSATIONS
2 BROUGHT AGAINST THE APPLICANT.

3 ~~3-1404.~~

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

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

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

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

14 ~~3-1405.~~

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

19 ~~3-1406. 3-1405.~~

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

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

26 ~~(1) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND~~

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

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

3 (1) THE GRAVITY OF THE VIOLATION;

4 (2) THE SIZE OF THE EMPLOYER’S BUSINESS;

5 (3) THE EMPLOYER’S GOOD FAITH; AND

6 (4) THE EMPLOYER’S HISTORY OF VIOLATIONS UNDER THIS
7 SUBTITLE.

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.